SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 190.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, AND J. H. COFFMAN, CLAIMANTS OF SAID ONE DISTILLERY ET ALIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of the circuit court of the United States, of the ninth judicial circuit in and for the southern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you between the United States of America, plaintiffs in error, and One Distillery et alia, and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said One Distillery et alia, defendants in error, a manifest error hath happened, to the great damage of the said United States of America, plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the eleventh day of September next, in the said Supreme Court. to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 12th day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
United States District Judge for the Southern District of California, and one of the Judges of the United States Circuit Court for the Southern District of California.

1½ (Indorsed:) United States Supreme Court. United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error. Writ of error. I do hereby certify that a copy of the within writ of error was this 12th day of August, 1897, lodged in the clerk's office of the said United States circuit court for the southern district of California, for the said defendants in error. Wm. M. Van Dyke, clerk of U. S. circuit court, southern district of California. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

2 UNITED STATES OF AMERICA, ss.

To one distillery et alia, and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said one distillery et alia, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the eleventh day of September, A. D. 1897, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit, in and for the southern district of California, wherein the United States of America are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Olin Wellborn, United States district judge for the southern district of California and one of the judges of the United States circuit court for the southern district of California. This 12th day of August, A. D. 1897, and of the Independence of the United States the one hundred and twenty-second.

OLIN WELLBORN,
United States District Judge for the Southern District of California, and one of the Judges of the United States Circuit Court for the Southern District of California.

2½ Received a copy of the within citation this 23rd day of August, 1897.

BROUSSEAU & HATCH,
Attorneys for Defendants in Error.

(Indorsed:) M'sh's Nor. Dist. Cali., No. 295. In the Supreme Court of the United States. United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error. Citation. Filed Aug. 27, 1897. Wm. M. Van Dyke, clerk.

3 *The answer of the judges of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California.*

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said circuit court within mentioned to the Supreme Court of the United States in a certain schedule to this writ annexed as within we are commanded.

By the court:

[SEAL.] WM. M. VAN DYKE, *Clerk.*

4 Circuit court of the United States. Ninth judicial circuit. In and for the southern district of California. January term, 1891.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
ONE DISTILLERY ET AL. } No.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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5 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judge of the district court of the United States for the southern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America, plaintiffs in error, and One Distillery et al., and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants, defendants in error, a manifest error hath happened, to the great damage of the said United States of America, plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, ninth judicial circuit, in and for the southern district of California, together with this writ, so that you have the same at Los Angeles, in

the said southern district of California, on the second Monday of January next, in the said circuit court, to be there and then held, that the record and proceedings aforesaid be inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the
6 Supreme Court of the United States, this 31st day of October, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] WM. M. VAN DYKE,
Clerk of the U. S. Circuit Court, Southern District of California.

The above writ of error is hereby allowed.

ROSS, *District Judge.*

(Endorsed:) United States district court in and for the southern district of California. United States of America vs. One Distillery et al., Henry Wolters et al., claimants. Writ of error. I do hereby certify that a copy of the within writ of error was this 31st day of October, 1890, lodged in the clerk's office for the above-named defendants in error. E. H. Owen, clerk of the U. S. district court. Filed Oct. 31st, 1890. E. H. Owen, clerk.

7 UNITED STATES OF AMERICA, ss.

To One Distillery et al., and Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants, greeting:

You are hereby cited and admonished to be and appear at the circuit court of the United States, ninth circuit, southern district of California, to be held at the city of Los Angeles, in the State of California, on the 12th day of January, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the district court of the United States in and for the southern district of California, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Erskine M. Ross, judge of the district court of the United States in and for the southern district of California, this 31st day of October, A. D. 1890, and of the Independence of the United States the one hundred and fifteenth.

ROSS, *District Judge.*

Service of a copy of the within citation is hereby acknowledged.

BROUSSEAU & HATCH,
Attorneys for defendants in error.

(Endorsed:) In the circuit court of the United States in and for the southern district of California. United States of America vs. One Distillery et al., Henry Wolters, et al., claimants. Citation.

8 In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS et al., claimants.

UNITED STATES OF AMERICA,
Southern District of California, ss:

Frank P. Flint, being duly sworn, deposes and says that heretofore, to wit, on the 1st day of November, A. D. 1890, he served the within citation by showing the original, and delivering a copy thereof personally to Brousseau and Hatch, attorneys of record for defendants in error, at their place of business, to wit, the office of said Brousseau and Hatch, Baker Block, city of Los Angeles, county of Los Angeles, State of California.

FRANK P. FLINT.

Subscribed and sworn to before me this 25th day of November, A. D. 1890.

WM. M. VAN DYKE,
U. S. Commissioner.

(Endorsed:) No. 82. The United States vs. One Distillery, etc. U. S. district court, southern district of California. Citation and return thereon. Filed November 25th, 1890. E. H. Owen, Clerk.

9 *The answer of Erskine M. Ross, judge of the district court for the southern district of California to the foregoing writ:*

The record and process, whereof mention is therein made, follow in these words, to wit:

10 United States of America. District court of the United States for the southern district of California.

To the Honorable E. M. Ross, judge of the district court of the United States in and for the southern district of California:

The libel of information of George J. Denis, attorney of the United States for the said district of California, who prosecutes for the United States in this behalf and in the name and behalf of the United States, against the distillery, winery, buildings, premises, consisting of five acres of land, situate in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine & Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three

hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy,
11 four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and against all persons claiming or intervening for their interest, and for cause of seizure alleges as follows:

I.

That, to wit, between the first day of July, 1887, and the first day of February, 1888, the said Fruitvale Wine & Fruit Company's distillery, near Fresno City, in Fresno County, California, aforesaid, did defraud and attempt to defraud the United States of the tax due by said company on certain spirits distilled by it, the product of its said distillery, failing and refusing to pay to the said United States the said tax due by said distillery on the spirits aforesaid, to wit, on the brandy distilled by the said Fruitvale Wine & Fruit Company between the dates aforesaid.

II.

That said company between the dates last named was a corporation duly organized and acting under the laws of the State of California, and as such was engaged in carrying on the business of distilling, and by reason of such evading and defrauding the distilled spirits and raw materials for the production of distilled spirits now in said distil'ery and on said distillery premises are forfeitable to the United States.

III.

That all matters and things alleged as aforesaid are within the jurisdiction of the United States and of this honorable court.

IV.

Lastly, the said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true.
12 Wherefore he prays that process in due form of law may issue against said distillery, winery, buildings, premises, consisting of five acres of land, situated in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine & Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons

of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy; and the goods and merchandise and property hereinbefore mentioned and described, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of said process, why such forfeiture should not be decreed according to the form of the statute in such cases made and provided.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 82. District court of the United States, southern district of California. The United States, plaintiff, vs. One Distillery et. al., defendants. Libel of information. Filed Nov. 13th, 1888. E. H. Owen, clerk. George J. Denis, United States Attorney.

13 SOUTHERN DISTRICT OF CALIFORNIA, ss.

The President of the United States of America to the marshal of the United States for the southern district of California, greeting:

Whereas a libel of information hath been filed in the dis-
[SEAL.] trict court of the United States for the southern district of California on the 13th day of November, in the year of our Lord one thousand eight hundred and eighty-eight, against the distillery, winery, buildings, premises, consisting of five acres of land situate in the county of Fresno, near the city of Fresno, and occupied by the Fruitvale Wine and Fruit Company, of which Wolters & Helm are now the proprietors, and also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and
14 against all persons claiming or intervening for their interest, for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said above-named articles or any of them may be cited, in general and special, to answer the premises, and all proceedings being had that the said above-named articles and each and every of them may, for the causes in the said libel of information mentioned, be condemned and sold to pay the demands of the United States of America:

You are therefore hereby commanded to attach the said above-named articles and each and every of them and to detain the same in your custody until the further order of the court respecting the same, and to give

due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel of information, that they be and appear before the said court, to be held in and for the southern district of California on Friday, the 30th day of November, 1888, at 10 o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Erskine M. Ross, judge of said court, at the city of Los Angeles, in the southern district of California, this 13th day of November, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the one hundred and thirteenth.

E. H. OWEN, *Clerk.*
GEORGE J. DENIS, ESQ.,
U. S. Attorney.

15 In obedience to the within monition, I attached the distillery, etc., etc., therein described on the 16th day of November, 1888, and have given due notice to all persons claiming the same that this court will on the 30th day of November (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

D. R. RISLEY,
U. S. Marshal,
By THOMAS B. HAYES,
Deputy Marshal.

Dated NOVEMBER 20TH, 1888.

(Endorsed:) No. 82. District court of the United States, southern district of California. The United States vs. One Distillery et al. Monition ret'ble Nov. 30th, 1888. George J. Denis, esq., U. S. attorney. Issued Nov. 13th, 1888. Filed Dec. 13, 1888. E. H. Owen, clerk.

16 In the district court of the United States, southern district of California.

UNITED STATES
vs.
ONE DISTILLERY ET AL. } No. 82. Demurrer.

Now comes the defendants, H. Wolters, Helm, and R. H. Austin, and demur to the libel of information in above-entitled case on the following grounds:

1.

That the court has no jurisdiction of the persons of the defendants above set forth, or the subject of the action.

2.

That the plaintiff in said cause has no legal capacity to sue.

3.

That there is a defect or misjoinder of parties defendant.

4.

That several causes of action have been improperly united.

5.

That the complaint or libel does not state facts sufficient to constitute a cause of action.

6.

That the complaint or libel of information is ambiguous, unintelligible, and uncertain.

17 As a special cause of objection to said libel of information, it does not appear within said libel of information that the Commissioner of Internal Revenue authorized said proceedings.

The authorization or sanction of said proceedings by the officer aforesaid must appear at least by averment in the libel of information.

As the matter now stands, the United States district attorney is proceeding upon his own volition, when the law requires absolute authorization, and such authorization to appear in the pleading.

The proceeding is defective in seeking to condemn five acres of land.

The pleading is further defective in alleging that the buildings and premises and machinery as set forth are occupied by the Fruitvale Wine and Fruit Company, of which "Wolters and Helm are now the proprietors." It is impossible for Wolters and Helm to be the proprietors of a company.

The pleading is further defective in omitting to state the amount of the tax due by said distillery on the spirits mentioned in said pleading.

The said pleading is further defective in omitting to aver in what manner or mode the defendants, H. Wolters, Helm, and R. H. Austin, are responsible in forfeiture or otherwise of the property alleged in said pleading to be the property of said Wolters and Helm, said Austin being omitted as one of the proprietors.

Although the present proceedings is in rem, there must be an aggressive party whose prop'rty is sought to be confiscated. The United States is the aggressive party, but there is no mention as to who at the present time are the owners of the property.

18 Again, while there is no allegation of the distinct ownership or responsibility of the Fruitvale Wine and Fruit Company, or Wolters, or Helm, there is a claim of forfeiture of property not allowed by law. (Sec. 3257, United States Revised Statutes.)

Forfeiture contemplates ownership. We say there is no averment of ownership of the property sought to be condemned on the part of the Fruitvale Wine and Fruit Company. There is a simple statement that

it was occupied by them, and that Wolters and Helm are now the proprietors. If the Fruitvale Wine and Fruit Company did defraud or attempt to defraud the United States of the tax due by said company on the brandy distilled by the said Fruitvale Wine and Fruit Company between the first day of July, 1887, and the first day of February, 1888, and if, as stated in said pleadings, Wolters and Helm are now the proprietors of the property sought to be forfeited, why should their property be forfeited to satisfy a claim of forfeiture on the part of the United States against the Fruitvale Wine and Fruit Company?

The defendants raised the point that under sec. 68, page 248, # 13, United States Statutes at Large, the seizure made by the United States of the property belonging to defendants, and proceedings to enforce the asserted forfeiture, were not commenced within the provisions of the above-cited law.

For the above reasons the defendants ask that their demurrer be sustained and that the libel of information be dismissed.

J. MARION BROOKS,
Atty. for Defendants Wolters, Helm, and Austin.

19 (Endorsed:) Service by copy of within made this 10 day of December, 1888. George J. Denis, United States attorney. United States district court, southern district of California. United States, plaintiff, vs. One Distillery et al., defendants. Demurrer & motion to dismiss. Filed December 10th, 1888. E. H. Owen, clerk; Wm. M. Van Dyke, deputy. J. Marion Brooks, atty. for defendants.

20 At a stated term, to wit, the January term, A. D. 1889, of the district court of the United States of America in and for the southern district of California, held at the city of Los Angeles on Thursday, the 3rd day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. E. M. Ross, district judge.

THE UNITED STATES
vs.
ONE DISTILLERY ET AL. } No. 82.

Parties appearing by respective counsel, the demurrer in the above-entitled cause is confessed by the U. S. atty., and ten days allowed in which to amend the libel of information.

21 In the United States district court for the southern district of California.

To the Hon. ERSKINE M. ROSS,
District Judge for the Southern District of California:

Be it remembered that on this the ninth day of January, in the year of our Lord one thousand eight hundred and eighty-nine, before the Honorable Erskine M. Ross, judge, as aforesaid, comes, in his own proper person, with this an amended libel of information, as permitted by the court, George J. Denis, esquire, attorney for the United States of America for

the aforesaid southern district of California, and in the name and behalf as well of the United States as of Asa Ellis, esquire, collector of the internal revenue for the first district of California, and of all other persons concerned, propounds and gives the said judge to understand and be informed that on the first day of November, in the year of our Lord one thousand eight hundred and eighty-eight, near the city of Fresno, in the county of Fresno, in the district aforesaid, the said Asa Ellis, esquire, collector as aforesaid, did seize the following real and personal property, to wit, five acres of land, situate about four miles from the city of Fresno, upon which stand the distillery and winery buildings and distillery and winery premises, heretofore occupied by the Fruitvale Wine and Fruit Company, together with all and singular the buildings standing upon said winery premises and distillery premises heretofore and above referred to; also of one still, one elevator, one grape stemmer, one lot of belting, one cauldron, one suction pump, one wine press, one wine tank, two trucks, one windmill and pump, nine wine
22 tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone, and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and tread wheel; also of thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wa*hs* for brandy; and all the tools, implements, and utensils used in the manufacture of distilled spirits, and now hath the same in custody and possession, as being forfeited to the United States for the causes hereinafter mentioned, that is to say:

For that heretofore, prior to said seizure, to wit: On the first of November, 1888, and for a long time prior thereto, taxes were, and continuously until and inclusive of the first day of November, 1888, were, and still are, imposed by the provisions of the internal-revenue laws of the United States on distilled spirits; that the said barrels containing proof brandy and high proof spirits, being goods, wares, and merchandise, articles and objects upon which taxes were and are imposed by provis'ons of law, were found by the said collector as aforesaid, on or about the first day of June, A. D. 1887, in the possession and custody and within the control of the Fruitvale Wine and Fruit Company, a corporation, for the purpose of being sold and removed by the said Fruitvale Wine and Fruit Company in fraud of the revenue laws, and with the design to avoid payment of said taxes due to the United States on
23 said brandy (the said brandy being distilled spriirits within the intent and meaning of the law) and spirits; that thereafter certain persons, theretofore stockholders in the Fruitvale Wine and Fruit Company, namely, Wolters, Helm, Austin, and Kauffman, purchased the property of the said Fruitvale Wine and Fruit Company hereinbefore described; that the said Wolters, Helm, Austin, and Kauffman purchased the property then and there, well knowing that the said Fruitvale Wine and Fruit Company, through its agents, employees, and officers, had so

sought, as aforesaid, to defraud the United States of the internal-revenue tax due by it to the Government, contrary to the form of the Revised Statutes of the United States in such case made and provided. Whereby, and by force of the said statutes, the said brandy, spirits, and all the property, tools, implements, and utensils hereinbefore mentioned and described, so found within the custody and within the control of the said Wolters, the said Helm, the said Austin, and the said Kauffman, became and are forfeited to the United States.

And for that, also, the said Fruitvale Wine and Fruit Company aforesaid, a corporation duly organized and incorporated under the laws of the State of California, being as aforesaid then and there a distiller of distilled spirits, and engaged in carrying on said business at and by means of said distillery, situate near the city of Fresno, aforesaid, in the county of Fresno, Southern District of California, did then and there defraud the the United States, during the months of July, August, September, October, November, and December, 1887, of the tax on a large quantity of spirits distilled by said company, by the fraudulent removal of said spirits from the distillery where the same had been distilled to a place
24 other than a distillery, bonded, or designated warehouse or place of depository, without the tax on said distilled spirits or any part thereof being paid, and without the packages in which said spirits were contained being stamped and branded, and without the law relative to distilled spirits being complied with in any manner whatever, with the intent to defraud the United States of the tax due on said spirits then and there distilled by it, the said Wolters, Helm, Austin, and Kauffman being then and there interested in and stockholders of the corporation aforesaid, and having knowledge as such stockholders and owners of the frauds aforesaid being practised as aforesaid upon the Government of the United States of America, and contrary to the form of the statutes of the United States in such case made and provided. Whereby and by reason whereof the said distillery and lot of land and all the property hereinbefore mentioned and described became and are forfeited to the United States in form and manner as by statute provided.

And for that also heretofore, on the the first day of July, A. D. 1887, and for a long time prior thereto and continuously thereafter until and inclusive of the 31st day of December, 1887, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, being a distiller of distilled spirits, and engaged then and there in carrying on the business of a distiller, of which corporation the said Wolters and the said Helm, the said Austin and the said Kauffman, were stockholders and owners therein, was by law required to keep a certain book in a form and manner prescribed by law, wherein it was required to enter from day to day, among other things, the number of hours said distillery was operated each day, and the number of wine gallons and proof gallons of distilled spirits, to wit: Of brandy produced each of said days, and one W. More
25 Young, the duly appointed and acting secretary of said corporation, and acting for said corporation, the owner as aforesaid of said distillery, then and there being required by law as aforesaid to keep said book in the form and manner aforesaid did, during the last-mentioned time, to wit: During the months of July, August, September, October, November, and December, 1887, then and there, with

intent to defraud the United States of the tax on the distilled spirits then and there made by him at and by means of said distillery, and with intent then and there to mislead and deceive the internal-revenue officers of the United States relative to the amount of spirits distilled at said distillery, did then and there willfully, knowingly, and fraudulently make certain false and fraudulent entries in said book relative to the quantity of spirits then and there produced by said corporation at its said distillery, and did then and there omit to make certain entries in said book of the quantity of materials purchased for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, and did then and there neglect and omit to do all other acts and things required of the said corporation relative thereto, with intent to mislead the officers of internal revenue in respect to said facts, and to defraud the United States of the tax due on the spirits distilled by said corporation at its said distillery, and the said attorney of the United States alleges that by means of said false entries and said omissions to make said entries the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, Helm, Austin, and Kauffman were part owners and stockolders, did, during the months hereinbefore stated, defraud the United States of the tax due on the spirits distilled by the said corporation.

26 Whereby and by reason whereof the said distillery and distillery premises, and all the property, real and personal thereunto belonging or in anywise appertaining, became and is forfeited to the United States in form and manner by the statutes provided.

And for that, also, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, the said Helm, the said Austin, and the said Kauffman were stockholders and part owners in the property of said corporation, which was then and there a distiller of spirits and engaged in carrying on said business at and by means of said distillery, situate near Fresno City aforesaid, in the county of Fresno, southern district of California, did then and there, at divers days and times during the months of July, August, September, October, November, and December, A. D. 1887, knowingly and willfully omit, neglect and refuse to do and cause to be done any and every of the things required by law in the carrying on and conducting of the said business, contrary to the form of the statutes of the United States in such case made and provided, whereby and by reason whereof the said brandy, spirits, wine, and all other property belonging to said corporation, and used by it in the distilling of spirits aforesaid, became and are forfeited to the United States in form and manner by the statutes provided.

And for that, also, the said Fruitvale Wine and Fruit Company, a corporation as aforesaid, of which the said Wolters, Helm, Austin, and Kauffman were stockholders, being as aforesaid then and there a distiller of spirits and engaged in carrying on said business at and by means of said distillery, did then and there commit acts prohibited by the provisions of law in the carrying on and conduct of said business of distiller, contrary to the form of the statutes of the United States

27 in such case made and provided, whereby and by reason whereof the property, real and personal, hereinbefore described became and is forfeited to the United States in form and manner by the statutes provided.

Lastly, the said attorney of the United States, on behalf of said United States, saith that all and singular the premises are true.

Wherefore he prays that process in due form of law may issue against the said lot of land, together with the buildings situated thereon, and all the personal property hereinbefore mentioned and described, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of the said process why such forfeiture should not be decreed.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) Received copy of the within libel of information this 11th Jan'y, 1889. Howard & Brooks, attorneys for claimants. 82. In the U. S. dist. court, southern dist. of Cal. United States against One Distillery et al. Amended libel of information. Filed Jan'y 11th, 1889. E. H. Owen, clerk. George J. Denis, U. S. attorney.

28 In the district court of the United States in and for the southern district of California.

THE UNITED STATES, PLAINTIFF,
vs.
ONE DISTILLERY ET AL., DEFENDANTS. } Answer.

To the Honorable E. M. Ross,
Judge of the District Court of the United States in and for the Southern District of California:

And now, Henry Walters, Wm. Helm, Austin, and Coffman, intervening for their interest therein, appear before this honorable court, and for answer to the amended libel and information of the United States attorney against the said distillery and against all persons concerned in interest therein, allege and particularly propound as follows:

I.

That the respondents are now the owners of all of the property, real and personal, described in said information, or so much thereof as actually existed at the time of seizure of the same, on or about the 2d day of November, 1888, as hereinafter described.

II.

That the time, manner, and means on which and by which the several portions of said property were acquired and created by respond-
29 ents are herein specifically set forth as follows, to wit:

The following, to wit: One still with merely a clapboard covering, one lot of belting, one pump, one wine press, one wine tank, two trucks, one pump and windmill, 21 wine tanks, 69 puncheons, five barrels, 54 fermenting tubs (for wine), 1 grindstone, tools, hose, one Howe's scale, a lot of lumber for tanks, 300 gallons sweet wine, with the winery building as all existed on the 9th day of June, 1888, with the five acres of land on which the same is situated, were each and all acquired by

respondents at and by a public sale thereof, by the assignee of the Fruitvale Wine and Fruit Company, had on said premises on the said 9th day of June, 1888, for the sum of $7,700.00 in cash, which sum was, on or about said date, paid by respondents to said assignee, and said property duly transferred to the possession and ownership of said respondents; that all of the wine embraced and included in said purchase and then on hand at said winery consisted of two pipes, all of which was spoiled and unmarketable.

III.

That immediately upon the completion of said sale and transfer of said property and premises those respondents formed a copartnership for the purpose of operating said winery upon said premises, and commenced negotiations for the purchase of a boiler and a large amount of machinery, and arranged for the construction and erection of necessary buildings involving an outlay of the sum of $5,000.00.

IV.

That on or about the 20th day of June, 1888, and while respondents were in possession of said premises and property, and were in good faith making large and expensive additions thereto, said property and premises were seized by and under the authority of the United States Government, acting through one Asa Ellis, then collector of internal revenue at San Francisco, for an alleged violation on the part of the corporation hereinbefore named, in the year 1887, of the revenue laws of the United States, and at the time of said seizure said premises and property were duly appraised at the sum of $7,200.00.

V.

That afterwards, by reasons of certain negotiations had with the revenue officials of the United States, the said premises and property were, on or about the 27th day of October, 1888, released and these respondents restored to the possession thereof, whereupon these respondents proceeded with further improvements and expenditures upon said premises and property, and engaged in the business of operating said winery, adding from their personal funds in the purchase of stock, material, and machinery a further sum of $25,000.00, thus increasing the value of the premises, machinery, material, and stock to the value of $35,000.00 or thereabouts, and in good faith carried on the business for which the same was purchased, and in all respects complied with the laws of the United States and the rules and regulations of the revenue department thereof.

VI.

That afterwards, to wit, on or about the 2d day of November, 1888, on account of the alleged wrongful acts of said corporation—The Fruitvale Wine and Fruit Company—occurring in the year 1887, the said premises and property, with all the additions, improvements, and stock and material made and supplied by these respondents, were again

seized by the revenue officers of the United States, and the occupancy and possession thereof withheld from these respondents and their agents until on or about the 30th day of November, 1888, when these
31 respondents were restored to the possession thereof by giving a bond in the sum of $35,000.00, the same being the amount of the aforesaid value of said property as fixed and determined by said revenue officials at or about said date.

VII.

That afterwards, to wit, on the 8th day of December, 1888, the said premises and property were again seized by and under the direction of said revenue officials of the United States, on acount of the alleged wrongdoing of said corporation during its occupancy thereof, and in order to prevent the sale of said premises and property, and to recover the possession thereof, and to prevent further loss and damage by the suspension of their business then and there being carried on, these respondents were compelled to and did pay under protest to the said collector of internal revenue the sum of $3,392.00 alleged to be due and owing from said corporation to the United States, by reason of the failure of the said corporation to comply with the laws and rules and regulations of the revenue service of the United States during the year 1887, the time of occupation and occupancy of said premises by said corporation.

VIII.

That between the dates of the first seizure and appraisement of said premises and property, which occurred on or about the 20th day of June, 1888, and the second seizure and appraisement thereof, which occurred on or about the 2nd of November, 1888, as hereinbefore set out, these respondents had added to said premises and property by expenditure from their own private funds to the extent of over $25,000.00, the following items, to wit: One building around the still, one boiler to crush and pump by steam, *around the still; one boiler to crush and pump by steam,*
32 a house for laborers to live in, 39 puncheons, 18 wine tanks, 2 fermenting tanks, a carload of barrels, 400 feet of hose, about 70,000 gallons of red wine, 30,000 gallons of white wine, 15,000 gallons of port and sherry wine, 1,000 gallons of brandy, and 450 gallons of alcohol, all of which, together with all of the property purchased and received by respondents from the assignee of said corporation, the said Fruitvale Wine and Fruit Company, as hereinbefore set out, were seized and taken from these respondents on said 2nd day of November, and again on said 8th day of December, as hereinbefore described, without the fault of these respondents, and without the pretense of wrongdoing on their part so far as they are aware or believe.

IX.

These respondents and each of them deny that the 1,000 gallons of brandy, or the 450 gallons of alcohol, or the barrels containing the same or either or any part of either of them, found in the possession of these respondents at the date of the seizure aforesaid in November, 1888, or

at any time, were the same, or formed the whole or any part of any brandy or alcohol or high proof spirits or barrels containing the same or any part thereof, which were found in the possession of the Fruitvale Wine and Fruit Company on or about the 1st on June, 1887, as alleged in said amended information; or that said brandy or alcohol or the barrels containing the same or any part thereof, ever were in the possession of said Fruitvale Wine and Fruit Company on June 1st, 1887, at said distillery, or at any other time or place.

These respondents deny that they or either of them ever at any time purchased or received from said Fruitvale Wine and Fruit Company any brandy or alcohol or other high proof spirits, well knowing,
33 or in any manner knowing, that said company had defrauded or sought to defraud the United States, or had failed to apply or sought to avoid the payment of taxes due thereon, or that the same had for any cause become forfeited to the United States.

X.

These respondents further answering, admit that they were small shareholders in the stock of the corporation known as the Fruitvale Wine and Fruit Company, in order to aid in promoting an industry in the interest of the community where the same was organized, but they all and each deny that they or either of them ever took any part in the conduct or management of said company's affairs, or ever occupied any position or had any voice in its control, and they and each of them especially deny and repudiate the charge in said amended information that they or either of them had knowledge of the frauds of the officers and agents of said corporation; they deny that they as stockholders or otherwise, had any knowledge whatsoever of any fraudulent removal of spirits from said premises, or of any failure to keep proper books of entry, or the making of fraudulent entries, or the omission to make certain entries required by law on the part of said corporation or of its secretary, W. More Young, or any of its agents, officers or employes whatsoever; on the contrary these respondents aver that in no way or manner either as stockholders or otherwise, did they ever at any time have knowledge prior to the seizure of their property as aforesaid of the alleged fraudulent acts of said corporation or the acts complained of, of any of its officers, agents or employes; that they *they* have not sufficient information in regard to the several wrongful acts alleged to have been perpetrated by said corporation on which to found a belief; they there-
fore, on behalf of said corporation, deny all and singular
34 the alleged fraudulent acts charged in said information as having been done and performed by said corporation, and aver that if said corporation has in any way or manner failed to perform its obligations to the United States, that it, said corporation, has made and executed and delivered to the United States a good and sufficient bond conditioned for the faithful compliance on its part of all its duties and obligations to the United States while engaged in the business carried on by said corporation on the premises aforesaid, and that said bond is still in full force and effect, and said respondents further aver that all and singular the amounts due by penalty or otherwise from said corporation to said United States have been fully satisfied, paid, and discharged.

XI.

That all and singular the premises are true.

Wherefore, respondents pray:

1st. That all and singular the goods, wares, and merchandise, land and premises seized as hereinbefore set forth be fully restored to them and decreed to be relieved from all claims on the part of the United States.

2nd. That the bond executed and delivered by these respondents for the sum of $35,000.00, as hereinbefore set out, be cancelled and delivered up to them.

3d. That the said sum of $3,392.00 paid by them to the United States as hereinbefore described be restored to them.

4th. For such other general relief as may be mete and proper in the premises.

BROUSSEAU & HATCH,
Attorneys for Respondents.

Copy of above received this 17" day of April, A. D. 1889,
35 verification waived.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 82. In the district court of the United States for the southern district of California. United States vs. One Distillery et al. Answer. Filed Apl. 19th, 1889. E. H. Owen, clerk.

36 In the United States district court, southern district of California.

THE UNITED STATES
vs.
ONE DISTILLERY ET AL. } Amendment to answer.

By leave of the court first had and obtained, the claimants in the above-entitled action amend and supplement their answers on file herein in manner following:

The said claimants aver that on or about the 20th day of December, 1888, an indictment was presented and filed in this court wherein and whereby one W. More Young was charged by the grand jury of the United States, then convened in said court, with having committed certain unlawful acts against the internal-revenue laws of the United States while the said Young was secretary of the Fruitvale Wine and Fruit Company, a corporation, a certified copy of said indictment being hereto annexed, marked Exhibit "A," and made a part hereof.

That thereafter the said W. More Young was duly arraigned in this court and entered a plea of not guilty; that thereupon the said Young was tried for the offenses charged in said indictment before the court and a jury duly impaneled and sworn to try said Young, and a verdict was rendered by said jury in open court and duly recorded, whereby the said Young was found guilty by said jury upon one of the counts of said indictment, to wit, upon the "first count," and not guilty upon the other

four charges or counts of said indictment, a certified copy of said
37 verdict being hereto annexed, marked Exhibit "B," and made a part hereof; that thereupon on, to wit, the 21st day of February, 1889, judgment was pronounced in said court against said Young, and he was sentenced to one year's imprisonment in the county jail of Fresno County, in execution thereof.

And claimants further aver that at all the times mentioned in said indictment the said W. Moore Young was a stockholder owning shares of the capital stock of said corporation, and that said corporation, at the dates and times mentioned therein, was the owner of all of the real and personal property upon which and in connection with which the said distillery was situated and operated.

That it was by virtue of his position as secretary of said corporation that said Young was enabled to execute and sign the document mentioned in the first count of said indictment, and likewise to execute and sign the documents mentioned in the other four counts thereof; and it was only as an officer of said corporation that said Young could have executed and signed any or either of them.

And these claimants further aver that the whole of the capital and property of said corporation consisted of said distillery and distillery premises, and winery with its appurtenances, and that the capital stock in said corporation owned by said More Young at said times represented the interest and property which he then had and owned in said distillery, distillery premises, and winery.

And these claimants also aver that the distillery and distillery premises, winery, and real and personal property mentioned in the libel of information herein, is the same distillery and distillery premises, winery, and real and personal property mentioned and referred to in said
38 indictment against said Young. And the alleged fraud, concealments, and removal of distilled spirits, and the other alleged fraudulent acts contained in said libel of information, are the same frauds, concealments, and removals of distilled spirits and other alleged fraudulent acts inquired of and investigated upon the trial of said W. More Young hereinabove mentioned, and in respect of which he was convicted and acquitted in manner aforesaid.

And these claimants further aver that all of the evidence which would be necessary to establish, and competent under the various assignments and charges of fraud set out in plaintiff"s libel of information herein, was used and introduced upon the trial of said Young; and that the various charges of fraud and causes of forfeiture alleged by plaintiffs herein relate to the same subject matter and are based on the same transactions as the various allegations in said indictment contained, and about which inquiry was made upon the trial of said Young; and that at the time when said bill of indictment was drawn by the then attorney for the United States, and found by the grand jury, and at all of the times it was considered by said attorney for the United States, all of the facts which would be competent to sustain the allegation of plaintiff"s libel of information were known to and within the possession of the said attorney of the United States.

And these claimants aver and say that the United States ought not to maintain its action herein for the penalty denounced by section 3451, and

other sections of the Revised Statutes of the United States under which the said libel of information was drawn, for the said W. More Young was tried and convicted in this court in manner aforesaid, as to one of the counts of said indictment and acquitted as to other counts, and the full sentence of the law and this court has been executed
39 upon him for the same matters and things herein alleged in plaintiff's said libel of information; and that all and singular of said matters upon said trial were tried and inquired into and fully heard, and on the hearing thereof the jury, duly impaneled and sworn, found said W. More Young guilty as to part and not guilty as to other of said charges.

And claimants further aver that at the time of the alleged commission of the acts for which a forfeiture is sought to be inforced in this action the said W. More Young was one of the owners of all of the property, real and personal, upon which a forfeiture could be decreed by this court, and that he ought not to be required to twice suffer for the same offense; and these claimants further aver in this behalf that it is only as stockholders in said corporation of which said W. More Young is and at all the times hereinabove mentioned was a member and stockholder that these claimants are sought to be charged with any notice of the alleged unlawful acts and doings of said corporation.

These claimants aver the foregoing in addition to their answer already on file herein, and expressly rely not only upon this, but upon all of the allegations and denials contained in said original answer. And having fully answered, they pray as they have heretofore prayed in said original answer.

Dated August 21st, 1890.

BROUSSEAU & HATCH,
HENRY C. MCPIKE,
Attorneys and Solicitors for Claimants.

40 EXHIBIT A.

In the United States district court in and for the southern district of California.

At a stated term of said court, begun and holden at the city of Los Angeles, in the county of Los Angeles, within and for the southern district of California, on the second Monday of August, in the year of our Lord one thousand eight hundred and eighty-eight.

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report, signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the

amount of brandy distilled during the month of August, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno and State of California, in which monthly return the said W. More Young certified that no brandy had been distilled during said month at the said distillery, when in truth and in fact the said distillery was in operation during said month, distilling brandy,
41 and the said W. More Young well knew that said distillery was in operation during said month, at the time that he falsely and fraudulently certified as aforesaid that no brandy had been distilled during the said month.

And the grand jurors aforesaid, on their oaths aforesaid, do further present—

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by the distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of September, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only four days of said month, to wit, on the 3rd, on the 5th, on the 10th, and on the 17th of said month, and that said distillery was in operation on each of said days twelve hours, and produced on the 3rd of said month forty-eight proof gallons of brandy, on the 5th of said month forty-seven proof gallons of brandy, on the 10th of said month forty-eight proof gallons of brandy, and on the 17th of said month forty-nine proof gallons of brandy; whereas, in truth and fact, said dis-
42 tillery was in operation on divers and other days during said month other than those reported by said defendant for twenty-four hours of each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly return; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of September, 1887, on the 5th day of October, 1887, he signed and executed a document the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws, and by a regulation made in pur-

suance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of October, 1887, at the Fruitvale Wine and Fruit Company's distillery near the town of Fresno, County of Fresno and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only five days of said month, to wit, on the 17th, on the
43 24th, on the 25th, on the 26th, and on the 27th of said month, and that said distillery was in operation on each of said days twelve hours, whereas, in truth and in fact, said distillery was in operation on divers and other days during said month, other than those reported by said defendant, for twenty-four hours to each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return in stead of twelve, as set forth by him, therein distilling brandy during all of the days during said month, and other than those reported in said monthly returns; and during said month of October, 1887, the said distillery produced a large quantity of brandy not reported by said W. More Young upon the monthly return heretofore named, required by law, and by the regulations of the internal-revenue department made in pursuance of such laws; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of October, 1887, on the 5th day of November, 1887, he signed and executed a document, the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That W. More Young, late of the southern district of California, heretofore, to wit, on the 7th day of December, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws, and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit
44 Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of November, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno, State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company aforesaid was in operation during only twelve days of said month, to wit, on the 2nd, on the 3rd, on the 4th, on the 7th, on the 8th, on the 9th, on the 10th, on the 14th, on the 15th, on the 16th, on the 17th, and on the 18th of said month, and that said distillery was in operation on each of said days twelve hours; whereas, in truth and in fact, said distillery was in operation on divers and other days during said month other than those reported by said defendant, for twenty-four hours to each day, and that said dis-

tillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly returns, and during said month of November, 1887, the said distillery produced a large quantity of brandy not reported by said W. More Young upon the monthly return heretofore named, required by law and by the regulations of the Internal-Revenue Department made in pursuance of such laws, and said W. More Young well knew, when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of November, 1887, on the 7th day of December, 1887, he signed and executed a document the contents of which he knew to be false.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

45 That W. More Young, late of the southern district of California, heretofore, to wit, on the 6th day of January, in the year of our Lord one thousand eight hundred and eighty-eight, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of December, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno, and State of California, in which monthly return the said W. More Young certified that the distillery of the said Fruitvale Wine and Fruit Company, aforesaid, was in operation during only four days of said month, to wit, on the 5th, on the 6th, on the 10th, and on the 21st of said month, and that said distillery was in operation on each of said days twelve hours, whereas in truth and in fact said distillery was in operation on divers and other days during said month, other than those reported by said defendant, for twenty-four hours to each day, and that said distillery was in operation twenty-four hours of each day reported by said W. More Young in said monthly return instead of twelve, as set forth by him therein, distilling brandy during all of the days during said month and other than those reported in said monthly returns; and during said month of December, 1887, the said distillery produced a large quantity of brandy not reported by said

46 W. More Young upon the monthly return heretofore named, required by law and by the regulations of the Internal Revenue Department made in pursuance of such laws; and said W. More Young well knew when he signed and executed the monthly return of said Fruitvale Wine and Fruit Company's distillery for the month of December, 1887, on the 6th day of January, 1888, he signed and executed a document the contents of which he knew to be false.

Against the peace and dignity of the United States and contrary to the form of the statute of said United States in such case made and provided.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) No. 89. United States district court, southern district of California. The United States of America vs. W. More Young. Indictment for falsely and fraudulently signing and executing documents required by Int. Rev. Laws, § 3451, R. S. A true bill. H. S. Parcels, foreman. Presented and filed in open court this 20th day of Dec., A. D. 1888. E. H. Owen, clerk. George J. Denis, United States attorney.

Names of witnesses examined before the said grand jury on finding the foregoing indictment: Jas. Devaney, Olaf Johnson, Oscar A. Johnson, James Warner, C. E. Gardner, J. B. Carter, E. B. Davis.

47 EXHIBIT B.

In the U. S. district court, southern district of California.

THE UNITED STATES *vs.* W. MORE YOUNG. } Verdict.

LOS ANGELES, *Feb'y 20th, 1889.*

In the case of the United States vs. Wm. More Young the jury find the defendant guilty in the first count of August and not guilty in the four other charges against said defendant.

FRED ETON, *Foreman.*

Filed Feb'y 20th, 1889.

(Endorsed:) No. 82. United States dist. court, southern dist. of Cal. The United States vs. One Distillery. Amendment to answer. Filed Aug. 21st, 1890. E. H. Owen, clerk. Brousseau & Hatch & Henry C. McPike, attys. & solicitors for claimants.

48 In the United States district court in and for the southern district of California.

THE UNITED STATES OF AMERICA *vs.* ONE DISTILLERY ET AL. } Demurrer to amendment of answer.

Now comes the United States, by Willoughby Cole, its attorney, and demurs to the amendment of the answer herein, and for cause of demurrer shows:

First. Because it does not state facts sufficient to constitute a defence to this action.

Second. Because it is insufficient in law to constitute a defence to this action.

Dated August 21st, 1890.

WILLOUGHBY COLE, *United States Attorney.*

(Endorsed:) No. 82. U. S. district court, so. dist. of California. The United States vs. One Distillery et al. Demurrer to amendment to answer. Filed Aug. 21st, 1890. E. H. Owen, clerk. W. Cole, U. S. atty.

49 At a stated term, to wit, the August term, A. D., 1890, of the district court of the United States of America, in and for the southern district of California, held at the city of Los Angeles on Monday, October 20th, in the year of our Lord one thousand eight hundred and ninety.

Present, Hon. E. M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* ONE DISTILLERY, ETC. (HENRY WOLTERS ET AL., claimants).	No. 82.

A demurrer having been heretofore filed by Willoughby Cole, esq., U. S. attorney, on the 21st day of August, 1890, to defendants' amended answer to the libel of information, and the same having been submitted on briefs, an opinion thereon by the court is now filed, and it is ordered that the demurrer be overruled.

The United States attorney thereupon excepts to the ruling of the court.

50 In the district court of the United States in and for the southern district of California.

THE UNITED STATES OF AMERICA *vs.* ONE DISTILLERY (HENRY WOLTERS & OTHERS, claimants).	No. 82.

Decree.

This cause came on regularly for trial before the court, sitting without a jury, a jury trial having been expressly waived in writing, the United States being represented by Willoughby Cole, esq., United States attorney, and the claimants by Messrs. Brousseau and Hatch, and Henry C. McPike, esq.

Whereupon the United States attorney announced to the court that the facts set forth in the amended and supplemental answer heretofore filed by the claimants in this action, and to which a demurrer had been interposed by the United States and overruled by the court might be considered by the court and taken as true for the purposes of this trial, as if the said facts had been proved by competent witnesses, but that they were insufficient in law to constitute a defence to this action.

Thereupon the United States, by their said attorney, and the claimants by their attorneys aforesaid, submitted the cause to the court for its decision upon the pleadings in said cause, and the said amended and supplemental answer, the facts as to the matter, as already stated, being taken as true, the court, after considering the same, orders and decrees that the libel herein be, and the same is hereby, dismissed.

ROSS, *District Judge.*

51 (Endorsed:) 82. U. S. district court, southern district of California. United States of America, vs. One Distillery et al. Decree. Filed October 21st, 1890. E. H. Owen, clerk.

52 In the district court of the United States in and for the southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY (HENRY WOLTERS & OTHERS, claimants).

Sections 3257, 3281, 3305, 3453, and 3456 of the Revised Stat'es of the United States are as follows:

"Section 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on spirits distilled by him, or any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years."

"Section 3281. Every person who carries on the business of a distiller without having given bond as required by law, or who engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits, or wines,
53 and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits, or wines, and personal property found in the distillery, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who, knowingly, has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States."

"Section 3305. Whenever any false entry is made in or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of said books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any
54 revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said

premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or wilfully fails to produce such books, or either of them, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years."

"Section 3453. All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles or with design to evade the payment of said tax, and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeiture shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made."

"Section 3456. If any distiller, rectifier, wholesale liquor dealer, or manufacturer of tobacco or cigars, shall knowingly or wilfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be a distiller, rectifier, or wholesale (liquor) dealer, all distilled spirits, or liquors owned by him or in which he has any interest as owner; and if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory, shall be forfeited to the United States."

Based on these sections an information was filed by the district attorney on the 13th of November, 1888, and amended on the 11th of January, 1889, for the forfeiture of certain real and personal property therein specifically described and which was seized by the collector of internal revenue for this district, on the first day of November, 1888, consisting of five acres of land, situated about four miles from the city of Fresno, upon which stand the distillery and winery buildings and distillery and winery premises theretofore occupied by the Fruitvale Wine and Fruit Company, a corporation organized and existing pursuant to the laws of the State of California, together with all and singular the buildings standing upon said winery and distillery premises; also, one still, one eleva-

tor, one grape stemmer, one lot of belting, one cauldron, one suc-
56 tion pump, one wine press, one wine tank, two trucks, one wind-
mill and pump, nine wine tanks, twelve wine tanks, sixty-nine puncheons, five barrels, fifty-four fermenting tubs, one lot of hose, one grindstone and a lot of tools, one Howe scales, one lot of lumber for tanks, one lot of lumber, three hundred gallons of sweet wine, one lot of hoop iron and pipe, one horse and treadwheel; also, thirty-nine puncheons, eighteen wine tanks, two fermenting tanks, seventy-eight barrels, twenty-nine half barrels, nine cords of wood, fifteen tons of grapes, four hundred feet of hose, seventy thousand gallons of claret, thirty-eight thousand gallons of white wine, two thousand gallons of port wine, one thousand gallons of brandy, four hundred and fifty gallons of alcohol, ten thousand gallons of wash for brandy, and all the tools, implements, and utensils used by said Fruitvale Wine and Fruit Company in the manufacture of distilled spirits.

The amended information alleged as grounds for a decree of forfeiture of the property in question, in substance, as follows:

1. That on the 1st day of June, 1888, the said Fruitvale Wine and Fruit Company had in its possession, custody, and control certain proof brandy and high proof spirits for the purpose of selling and removing the same in fraud of the revenue laws, and with the design of avoiding payment of the taxes due the Government.

2. That the said Fruitvale Wine and Fruit Company, being a distiller of distilled spirits, and engaged in carrying on that business at the aforesaid distillery, did defraud the Government during the months of July, August, September, October, November, and December, 1887, of the tax on a large quantity of spirits distilled by it, by the fraudulent removal of such spirits from the distillery where the same had been dis-
57 tilled to a place other than a distillery, bonded or designated warehouse, or place of depository, without the tax thereon being paid, and without the packages in which the same was contained being stamped or branded, and without the law in relation to distilled spirits being complied with in any manner, and with the intent to defraud the Government of the tax due on said spirits.

3. That the said Fruitvale Wine and Fruit Company, as such distiller, during the months of July, August, September, October, November, and December, 1887, with intent to defraud the Government of the tax due on spirits distilled by it, made through its secretary, W. More Young, false entries in the books required by law to be kept by it, and omitted to do other things and perform other acts in relation thereto, required by law to be performed, and by such means defrauded the Government.

4. That the said Fruitvale Wine and Fruit Company as such distiller did, during the months of July, August, September, October, November, and December, 1887, knowingly and wilfully omit, neglect, and refuse to do or cause to be done any of the acts required by law in carrying on its business of distilling, and did during the same time in carrying on its said business commit acts prohibited by the law.

It is alleged that at all of the times referred to Wolters, Helm, Austin, and Kauffman, who are claimants herein, were holders of stock of the Fruitvale Wine and Fruit Company, and were cognizant of all of the alleged fraudulent acts and omissions on the part of the corporation, and

that they subsequently with full knowledge of such fraudulent acts and omissions purchased all of the said property.

Wolters, Helm, Austin, and Kauffman appeared as claimants
58 and filed an answer to the amended information in which all of the allegations of fraud on their part are denied, and which sets up that they are the owners of all of the property described in the information, or so much of it as actually existed at the time of seizure. That they acquired certain described portions of it by purchase at a public sale made by the assignee of the Fruitvale Wine and Fruit Company on the 9th of June, 1888, for the sum of $7,700, which sum they paid, and thereupon received possession of the property purchased. That thereupon claimants formed a partnership for the purpose of operating the winery on the premises, and added thereto necessary machinery and buildings to the extent of $5,000 in value. That on or about June 20, 1888, and while claimants were in possession of the premises and in good faith making large and expensive additions thereto, the property was seized by the collector of internal revenue for an alleged violation of the revenue laws by the Fruitvale Wine and Fruit Company in the year 1887. That by reason of negotiations with the revenue officials the property was, on or about October 27, 1888, released and claimants restored to its possession, whereupon they proceeded to make further improvements and expenditures and engaged in the business of operating the winery, adding from their personal funds in the purchase of stock, material, and machinery the sum of $25,000; pursued the business and in all respects complied with the laws of the United States and the rules and regulations of the revenue department. That afterwards, to wit, on or about the 2nd day of November, 1888, on account of the alleged wrongful acts of the Fruitvale Wine and Fruit Company occurring in the year 1887, the said premises and property, with all the additions and improvements, stock and material, made and supplied by claimants, were again seized by the revenue officers and the possession thereof withheld from
59 claimants until on or about November 30th, 1888, when claimants were restored to possession by giving a bond in the sum of $35,000. That afterwards, to wit, on the 8th of December, 1888, the said premises and property were again seized by the internal-revenue collector on account of the alleged wrongdoing of the Fruitvale Wine and Fruit Company during its occupancy thereof, and that in order to prevent the sale of said property and to recover its possession, and to prevent further loss and damage by the suspension of their business, the claimants were compelled to and did pay under protest to the collector the sum of $3,392, alleged to be due and owing from the Fruitvale Wine and Fruit Company to the Government by reason of the failure of that corporation to comply with the laws and the rules and regulations of the revenue department during the year 1887. That between the dates of the first seizure, on or about June 20th, 1888, and the second seizure, on or about November 2nd, 1888, claimants added to the premises certain described property, the aggregate value of which was over $25,000, all of which was included in the seizure of November 2nd, and also in that of December 8th, 1888, without fault on their part. They deny that the 1,000 gallons of brandy, or the 450 gallons of alcohol, or the barrels containing the same, found in their possession at the time of the seizure

in November, constituted any part of the property alleged to have been found in the possession of the Fruitvale Wine and Fruit Company on or about June 1st, 1887, or that said brandy or alcohol, or the barrels containing the same, ever were in possession of that company at the distillery or elsewhere. They deny that they, or either of them, ever purchased or received from the Fruitvale Wine and Fruit Company any brandy or alcohol, or other high proof spirits, knowing that the company had
60 defrauded, or sought to defraud, the Government, or had failed to apply or sought to avoid the payment of taxes due thereon, or that the same had for any cause become forfeited to the Government.

The claimants, by their answer, admit that they were owners of stock in the Fruitvale Wine and Fruit Company, but deny that they, or either of them, had any knowledge of the alleged frauds, on the part of that corporation, or its officers, or ever heard of them until after the seizure of the property by the collector.

By an amendment to their answer filed on the 21st of August, 1890, the claimants set up this defence: That after the last seizure and on the 20th of December, 1888, W. Moore Young was indicted by the U. S. grand jury upon five separate counts, charging that he had committed unlawful acts against the revenue laws while secretary of the Fruitvale Wine and Fruit Company, upon which indictment he was tried, and, on the 20th of February, 1889, convicted upon the first count and acquitted as to the other four, the record of his conviction being made part of the amended answer.

The first count of the indictment charged that as secretary of the Wine and Fruit Company it became the duty of Young to sign and execute each month a statement in writing showing the date, kind of material used, time of operation and amount of brandy distilled by the company, of which he was secretary. That during the month of September, 1887, he signed and executed a report for the previous month in which he knowingly made false and fraudulent statements concerning the matters and things required of him by the law.

The second count made a similar charge respecting his statement for the month of September, the third in respect to October, the fourth
61 in respect to November, and the fifth in respect to December, 1887.

The amended answer avers that "at all the times mentioned in the indictment, said Young was a stockholder in the said company, and that at all the times mentioned in the indictment the said company was the owner of all the real and personal property upon which and in connection with which the distillery was situated and operated. That it was by virtue of his position as secretary that he was enabled to sign and execute the documents mentioned in the indictment, and that it was only as such officer that he could have signed the documents. That the whole of the capital and property of the corporation consisted of said distillery and winery premises, with the appurtenances to each, and that the capital stock in said corporation owned by said Secretary Young represented the interest and property which he then had in and owned in said distillery, winery, etc. That the distillery and distillery premises, winery, and real and personal property mentioned in the libel is the same distillery and distillery premises, winery, and real and personal property mentioned and referred to in said indictment against said Young. That

the alleged frauds, concealments, and removals of distilled spirits and the other fraudulent acts set forth in said libel are the same frauds, concealments, and removals and other unlawful acts inquired of and investigated upon the trial of said Young, and in respect to which he was convicted.

That all the evidence which would be necessary to establish the various assignments and charges of fraud set out in the libel were used and introduced upon the trial of said Young. That at the time of the alleged commission of the acts for which a forfeiture is sought to be enforced in this action said Young was one of the owners of all of
62 the property, real and personal, upon which a forfeiture could be decreed by the court."

To this defence the district attorney on behalf of the Government demurred, and the question of its sufficiency—accepting as true the facts alleged—is now for decision.

The indictment against Young was based on section 3451 of the Revised Statutes, which is as follows:

"Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited."

The case of the United States v. McKee, 4 Dillon, 128, was a civil action brought by the Government to recover the liability denounced by section 3296 of the Revised Statutes of double the amount of taxes of which the United States had been defrauded by the unlawful removal of whiskey from the distilleries of various persons, in which removals it was charged the defendant aided and abetted.

The defendant interposed two defenses:

1. That he had been theretofore indicted, convicted, and punished for the same offences.

2. That for these offences he had been pardoned by the President. To that answer the Government demurred. Mr. Justice Miller, with whom concurred Judge Dillon, in overruling the demurrer held, that if the specific acts of removal on which the civil suit was brought were
63 the same which were proved in the indictment, the former conviction and judgment constituted a bar to the civil suit, on the ground that our laws forbid that anyone shall be twice punished for the same crime or misdemeanor. That case was cited with apparent approval by the Supreme Court in Coffey v. United States, 116 U. S., 445. The circumstance that the civil suit was under one section of the Revised Statutes and the criminal prosecution under another was not considered to affect the question, nor is any reason perceived why it should. The decision was based upon the averments that both proceedings were for the same acts or transactions. If the Government can not be permitted to maintain a civil action for the recovery of money denounced as a penalty for a violation of one of the sections of the statute where the same party had been previously prosecuted and convicted and punished for the

same acts or transactions under another section, it would seem, for the same reasons, to follow necessarily that the Government can not be permitted to maintain a civil action for the forfeiture of the property of a person for the acts or transactions for which it has previously prosecuted, convicted, and punished him. It is true that in the present case, Young, the person heretofore indicted, convicted, and punished under section 3451 of the Revised Statutes, is not a claimant, and that the claimants, Wolters, Helm, Austin, and Kauffman, allege in their original answer that they acquired by purchase at a public sale made by the assignee of the Fruitvale Wine and Fruit Company, on the 9th day of June, 1888, all of the property in question then in existence, and have since owned the same together with that subsequently added. But it must be remembered that the pleadings show that the alleged fraudulent acts of commission and omission upon which the Government's right to a
64 decree of forfeiture is based occurred in the year 1887, and that it is the established doctrine of the Supreme Court that the forfeiture took effect immediately upon the commission of the acts denounced by the statute. (United States v. Stowell, 133 U. S., p. 1.) "The right to the property then vests in the United States," said the court, "although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory transfer of the right to the United States at the time the offense is committed; and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith." The purchase made by Wolters, Helm, Austin, and Kauffman at the sale made in June, 1888, by the assignee of the Fruitvale Wine and Fruit Company was therefore void as against the Government, even if they could be regarded as purchasers in good faith. But that they can not be so regarded is plain, for the reason, among others, that each of them was an owner of stock in that corporation and therefore interested in the property at the time of the perpetration of the frauds. That sale being void as respects the Government for one purpose is void as to all, and the rights of the Government are to be determined as though it had never occurred.

The right which the Government by this suit asks the court to enforce is the right which vested in it in 1887 to take the property as forfeited by the fraudulent acts on the part of the Fruitvale Wine and Fruit Company. (U. S. v. Stowell, supra.) When that right accrued, Young, as an owner of stock in that corporation, had an interest in every part and parcel of the property of the company. The Government had the right to proceed by civil action to enforce the forfeiture of the property because of the frauds, or to prosecute the parties engaged in it
65 criminally; but for the same acts it could not do both, according to the ruling in the cases to which reference has been made.

It does not seem to me to be material that Young does not here appear as a claimant. If the facts be as alleged—and upon demurrer they are to be taken as true—the Government indicted, convicted, and punished him for certain frauds committed in relation to the property in question, and for the same fraudulent acts and omissions that were introduced in proof in support of that indictment it asks the court in the present suit to decree a forfeiture of the property, the right to which accrued to the Government as has been seen, at the time of the commis-

sion of the frauds, and when Young as a stockholder in the corporation was interested in every part and parcel of the property. To take the property in which he has an interest is to take his property; and, for the same acts and omissions, to punish him criminally and also take his property is, for the same offences, to punish him twice.

The circumstance that Wolters, Helm, Austin, and Kauffman have not been prosecuted for the fraudulent acts and omissions that are made the basis of the present action does not relieve the Government's case of the difficulty. To take the property from one stockholder is to take it from all, and I can see no valid reason why the plea in bar of the action may not be interposed by any one interested in the property. Indeed, according to the Admiralty practice, by which this proceeding is governed, the court protects and holds the property for the benefit of the true owner, whoever he may be. (Conkling's Admiralty Practice, vol. 2, pg. 54th.) Domurrer overruled.

Ross, *District Judge.*

66 (Endorsed:) 82. United States district court, southern dist. of California. United States of America v. One Distillery, etc. Opinion. Filed October 20th, 1890. E. H. Owen, clerk.

67 In the district court of the United States in and for the southern district of California.

UNITED STATES OF AMERICA
vs.
ONE DISTILLERY, ETC. (HENRY WOLTERS ET AL., claimants). } No. 82.

I, E. H. Owen, clerk of the district court of the United States in and for the southern district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment roll and enrolled papers in the above-entitled action.

Attest my hand and the seal of said district court this 21st day of October, 1890.

[SEAL.] E. H. OWEN, *Clerk.*

(Endorsed:) No. 82. U. S. district court, southern district of California. United States of America vs. One Distillery, etc. (Henry Wolters et al., claimants). Enrolled papers. Filed October 21st, 1890. E. H. Owen, clerk.

68 Circuit court of the United States of America, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL. } In error.

Of January term, in the year of our lord one thousand eight hundred and ninety-one:

Afterwards, to wit, on the second Monday of January, in this same term, before the Honorable Lorenzo Sawyer, judge of said circuit court

of the United States, ninth circuit, southern district of California, comes the plaintiff the United States of America, by Willoughby Cole, United States attorney for the said southern district of California, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the amendment to the answer aforesaid, and the matters therein contained, are not sufficient in law for the said claimants to have or maintain the same as a defense to the aforesaid action against the said One Distillery et al.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given decreeing a dismissal of the libel herein, and against the United States, whereas by the law of the land the said judgment ought to have been given for the United States, and ought not to have decreed a dismissal of the libel herein, and the United States prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it
69 may be restored to all things which it has lost by occasion of said judgment.

WILLOUGHBY COLE,
United States Attorney for the Southern District of California.

70 In the district court of the United States of America in and for the southern district of California.

THE UNITED STATES OF AMERICA
vs.
ONE DISTILLERY ET AL. } No. 82.

I, E. H. Owen, clerk of the district court of the United States of America, in and for the southern district of California, do hereby certify the foregoing seventy-six pages, numbered from one to seventy-six, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same constitute the transcript on appeal to the circuit court of the United States, of the ninth judicial circuit, in and for the southern district of California, in said cause.

Attest my hand and the seal of said district court this 2nd day of January, A. D. 1891.

[SEAL.] E. H. OWEN, *Clerk.*

(Endorsed:) No. 197. U. S. circuit court, southern district of California. The United States of America vs. One Distillery et al. Transcript. Filed January 9th, 1891. Wm. M. Van Dyke, clerk.

71 At a stated term, to wit, the January term, A. D. 1891, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Monday, the 12th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS IN error,
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS ET al., claimants, defendants in error.
} No. 197.

This cause coming on regularly on this day for a hearing, now, pursuant to the stipulation of the parties this day filed herein, and on motion of Willoughby Cole, esq., United States attorney, it is ordered that said cause be submitted on briefs, with thirty (30) days time from this day for said United States to file their brief, with thirty (30) days for One Distillery et al., and said claimants, to reply thereto, and twenty (20) days for said United States to reply to said brief of said One Distillery et al., and said claimants.

72 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court January 12th, 1891, in the cause entitled The United States of America, plaintiffs in error, vs. One Distillery et al., Henry Wolters et al., claimants, defendants in error, No. 197, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 26th day of February, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. The United States of America v. One Distillery, etc., Henry Wolters et al., claimants. Certified copy of order of submission. Filed Feb. 26, 1897. Wm. M. Van Dyke, clerk.

73 In the circuit court of the United States, ninth judicial circuit, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF IN error,
vs.
ONE DISTILLERY, ETC., HENRY WOLTERS ET AL., claimants, defendants in error.
} No. 197.

In error to the district court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the district court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed.

February 23rd, 1897.

JOSEPH MCKENNA,
Circuit Judge.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. The United States of America, plaintiffs in error, vs. One Distillery, etc., Henry Wolters et al., claimants. Order and judgment. Filed Feb. 26, 1897. Wm. M. Van Dyke, clerk.

74 In the circuit court of the United States, ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFFS IN error,
vs.
ONE DISTILLERY ET AL., HENRY WOLTERS ET AL., claimants, defendants in error.
} No. 197.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the ninth judicial circuit, southern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said circuit court this 26th day of February, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 197. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. The United States of America vs. One Distillery, etc., Henry Wolters et al., claimants. Judgment roll. Filed February 26th, 1897. Wm. M. Van Dyke, clerk. Recorded Judgment Register Book No. 1, page 326.

75 In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
ONE DISTILLERY, WOLTERS ET AL., DEFENDANTS IN error.

The plaintiff in error respectfully petitions the above-named court for its allowance of writ of error to the Supreme Court of the United States to review the judgment of the circuit court in and for the ninth circuit, southern district of California, given, made, and rendered therein on the 26th day of February, 1897, in favor of the above-named defendants in error and against the above-named plaintiff in error in an action for the forfeiture of certain real and personal property therein specifically described and which was seized by the collector of internal revenue, which said proceedings were instituted in the district court of the United States in and for the southern district of California by plaintiff in error, and to which said proceedings defendants and claimants in error answered, setting up matters in abatement; and your petitioner, plaintiff in error, demurred to said answer of defendants and claimants in error; and on hearing of said demurrer before said district court, the same was overruled, and thereafter, by writ of error, was removed to said circuit court,

which affirmed said judgment of the district court on said 26th day of February, 1897.

Your petitioner further shows that the amount and matter in
76 dispute in said proceedings is and was thirty-five thousand dollars.

Your petitioner will present and file with the clerk of the court below, to wit, said circuit court of the United States, an assignment of errors alleged to have been committed upon the hearing and determination of said appeal, and which said assignment of errors will point out separately each error unsettled and intended to be urged, and upon the finding of such specifications will ask said court to allow the same.

And your petitioner will ever pray.

FRANK P. FLINT,
United States Attorney, Southern District of California,
Attorney for Plaintiff in Error.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. United States vs. One Distillery, Wolters, et al. Petition for writ of error. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

77 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF in error.
vs.
ONE DISTILLERY, WOLTERS, ET AL., CLAIMANTS, defendants in error.
} In error.

Assignment of errors.

The plaintiff in error herein assigns the following as errors committed by the court below in the determination of this cause and the rendition of the judgment therein:

I.

The court erred in affirming the judgment of the district court in entering judgment for defendants and claimants upon the overruling of the demurrer of plaintiff to amended answer of defendants and claimants.

II.

The court erred in affirming the judgment of the district court that the amendment to the answer of defendants and claimants and matters contained therein are sufficient in law for said defendants and claimants to have or maintain the same as a defense to said action.

III.

The court erred in affirming the decree dismissing the libel herein and entering judgment against the United States, as appears from said judgment, for the reason that by the law of the land said judgment ought to have been given to the United States and said decree dismissing said libel ought not to have been affirmed.

78 IV.

That the judgment of the circuit court should have been reversing the decision of the district court, with instructions to sustain the demurrer interposed by plaintiff to the amended answer of defendants.

Wherefore your petitioner prays that said judgment be reversed, and that this honorable court make such further order as it deems proper.

FRANK P. FLINT,
United States Attorney for Southern District of California,
Attorney for Plaintiff in Error.

(Endorsed:) No. 197. U. S. circuit court, ninth circuit, southern district of California. United States vs. One Distillery, Wolters, et al., claimants. Assignment of errors. Filed Aug. 12, 1897. Wm. M. Van Dyke, clerk.

79 At a stated term, to wit, the August term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Thursday, the twelfth day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, and J. H. COFFMAN, claimants of said One Distillery et alia, defendants in error. } No. 197.

On reading and filing the petition of the above plaintiffs in error, the United States of America, praying for the allowance of a writ of error in said cause, returnable before the Supreme Court of the United States, and on motion of Frank P. Flint, esq., United States attorney for the southern district of California and attorney for said plaintiffs in error, it is ordered that said petition be, and the same hereby is, allowed and granted, and that a writ of error be, and the same hereby is, allowed in said cause, returnable before the Supreme Court of the United States on the 11th day of September, 1897, and that a transcript of the

80 record and of all of the proceedings and papers upon which the judgment herein was rendered, duly authenticated, be transmitted to the Supreme Court of the United States.

81 In the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
ONE DISTILLERY ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, and J. H. COFFMAN, claimants of said One Distillery et alia, defendants in error. } No. 197.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing eighty pages, numbered from 1 to 80, inclusive, and contained in one volume, to be a full, true, and correct copy of the record, pleadings, papers, assignments of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, this 30th
82 day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

(Indorsement on cover:) Case No. 16712. S. California C. C. U. S. Term No. 190. The United States, plaintiff in error, vs. One Distillery et alia, & Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, claimants of said One Distillery et alia. Filed October 30th, 1897. Office Supreme Court of U. S. Received Oct. 30, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
ONE DISTILLERY ET ALIA AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN, AND J. H. COFFMAN, claimants of said One Distillery et alia. — No. 190.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The facts in the case, taken from the libel of information filed by the attorney for the United States and the answer and amended answer of claimants, are substantially as follows:

The Fruitvale Wine and Fruit Company was a corporation duly organized under the laws of the State of California, and as such corporation, under its corporate name, was the owner and operator of a distillery near Fresno, Cal., at which the business of brandy distilling was carried on in the months of July, August, September, October, November, and December, 1887.

W. More Young, a stockholder in the company, was the managing director of the same and also the active agent of the company in operating the said distillery during the said months.

On the 20th day of June, 1888, the distillery, distillery property, etc., were seized by the collector of internal revenue of the district as forfeited to the United States by reason of certain criminal violations of the internal-revenue laws of the United States committed in connection with the said distillery, its product and business, by the said Fruitvale Wine and Fruit Company, the owner thereof, whilst the same was operated under the charge and management of W. More Young, the secretary and managing agent of the company; the grounds of forfeiture being, in substance, that the said Fruitvale Wine and Fruit Company, a corporation, and a distiller of spirituous liquor from fruit, did commit, in the months of July, August, September, October, November, and December, 1887, certain frauds, concealments, removals, and other crimes in connection with said distillery and its product, whereby the United States was defrauded of the internal-revenue tax on the spirits produced at the said distillery.

(There were other formal seizures of the distillery and property subsequent to that of June 20, 1888, all of which were based on criminal offenses committed during the operations under the management of W. More Young in 1887, but it is not necessary to the legal propositions involved in the case to set them forth here specifically.)

W. Moré Young, the managing agent aforesaid, was indicted on the 20th of December, 1888, under section 3451 of the Revised Statutes, and was convicted on the

21st of February, 1889, upon the first count of said indictment and sentenced to imprisonment for a year in the county jail. The count upon which Young was convicted, omitting the formal parts, is as follows:

> That W. More Young, late of the southern district of California, heretofore, to wit, on the 5th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, did falsely and fraudulently execute and sign a certain document required by the provisions of the internal-revenue laws and by a regulation made in pursuance thereof, to wit, a certain monthly return required to be made by distillers of grapes, which certain monthly return consisted of a report, signed and executed by said W. More Young, as secretary of the Fruitvale Wine and Fruit Company, a corporation engaged in the business of wine making and distilling, of the dates, the kind of material, the time of operation, and the amount of brandy distilled during the month of August, 1887, at the Fruitvale Wine and Fruit Company's distillery, near the town of Fresno, in the county of Fresno and State of California, in which monthly return the said W. More Young certified that no brandy had been distilled during said month at the said distillery, when in truth and in fact the said distillery was in operation during said month, distilling brandy, and the said W. More Young well knew that said distillery was in operation during said month, at the time that he falsely and fraudulently certified as aforesaid that no brandy had been distilled during the said month.

The amended libel of information against the property filed by the United States attorney, beginn'ng on page 10 of the record, alleges in substance:

First. That whilst the distillery was being operated

the company defrauded the United States, in the months of July, August, September, October, November, and December, 1887, of the tax on a large quantity of spirits distilled by the said company by the fraudulent removal of the said spirits from the distillery where the same had been distilled to a place other than a distillery, bonded, or designated warehouse or place of depository, without the tax on said distilled spirits, or any part thereof, being paid.

Second. That the said company, whilst carrying on the business of a distiller at their said distillery during said months, with intent to defraud the United States of tax on distilled spirits then and there made certain fraudulent and false entries in a book in relation to the operation of the distillery which was required by law to be kept, etc.

Third. That the company during the time knowingly and willfully and fraudulently omitted, neglected, and refused to do and cause to be done things required by law in carrying on and conducting said business; and

Fourth. That the said company did then and there willfully and fraudulently commit acts prohibited by the provisions of law in carrying on and conducting the business of distiller.

The claimants, Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, filed an answer, beginning on page 14 of the Record, in which they claim the property as purchasers of the same at a sale made by the assignee of the Fruitvale Wine and Fruit Company on the 9th of June, 1888. In this answer the said claimants make no specific denial of the causes of forfeiture set forth in the information, but aver that the criminal

acts upon which the forfeiture of the property is based were committed without the knowledge or consent of claimants or any of them.

The said claimants, Wolters, Helm, Austin, and Coffman, all of whom were stockholders in the Fruitvale Wine and Fruit Company whilst the distillery was being operated in 1887, by leave of court filed an amended answer (Record, p. 18), which is as follows:

> The said claimants aver that on or about the 20th day of December, 1888, an indictment was presented and filed in this court wherein and whereby one W. More Young was charged by the grand jury of the United States, then convened in said court, with having committed certain unlawful acts against the internal-revenue laws of the United States while the said Young was secretary of the Fruitvale Wine and Fruit Company, a corporation, a certified copy of said indictment being hereto annexed, marked "Exhibit A," and made a part hereof.
>
> That thereafter the said W. More Young was duly arraigned in this court and entered a plea of not guilty; that thereupon the said Young was tried for the offenses charged in said indictment before the court and a jury duly impaneled and sworn to try said Young, and a verdict was rendered by said jury in open court and duly recorded, whereby the said Young was found guilty by said jury upon one of the counts of said indictment, to wit, upon the "first count," and not guilty upon the other four charges or counts of said indictments, a certified copy of said verdict being hereto annexed, marked "Exhibit B," and made a part hereof; that thereupon on, to wit, the 21st day of February, 1889, judgment was pronounced in said court against said

Young, and he was sentenced to one year's imprisonment in the county jail of Fresno County, in execution thereof.

And claimants further aver that at all times mentioned in said indictment the said W. More Young was a stockholder, owning shares of the capital stock of said corporation and that said corporation, at the dates and times mentioned therein, was the owner of all of the real and personal property upon which and in connection with which the said distillery was situated and operated.

That it was by virtue of his position as secretary of said corporation that said Young was enabled to execute and sign the document mentioned in the first count of said indictment, and likewise to execute and sign the documents mentioned in the other four counts thereof; and it was only as an officer of said corporation that said Young could have executed and signed any or either of them.

And these claimants further aver that the whole of the capital and property of said corporation consisted of said distillery and distillery premises and winery, with its appurtenances, and that the capital stock in said corporation owned by said W. More Young at said times represented the interest and property which he then had and owned in said distillery, distillery premises, and winery.

And these claimants also aver that the distillery and distillery premises, winery, and real and personal property mentioned in the libel of information herein is the same distillery and distillery premises, winery, and real and personal property mentioned and referred to in said indictment against said Young. And the alleged fraud, concealments, and removal of distilled spirits, and the other alleged fraudulent acts contained in said libel of information, are the same

frauds, concealments, and removals of distilled spirits and other alleged fraudulent acts inquired of and investigated upon the trial of said W. More Young hereinabove mentioned, and in respect of which he was convicted and acquitted in manner aforesaid.

And these claimants further aver that all of the evidence which would be necessary to establish, and competent under the various assignments and charges of fraud set out in plaintiff's libel of information herein, was used and introduced upon the trial of said Young; and that the various charges of fraud and causes of forfeiture alleged by plaintiffs herein relate to the same subject-matter and are based on the same transactions as the various allegations in said indictment contained, and about which inquiry was made upon the trial of said Young; and that at the time when said bill of indictment was drawn by the then attorney for the United States and found by the grand jury, and at all of the times it was considered by said attorney for the United States, all of the facts which would be competent to sustain the allegation of plaintiff's libel of information were known to and within the possession of the said attorney of the United States.

And these claimants aver and say that the United States ought not to maintain its action herein for the penalty denounced by section 3451, and other sections of the Revised Statutes of the United States under which the said libel of information was drawn, for the said W. More Young was tried and convicted in this court in manner aforesaid as to one of the counts of said indictment and acquitted as to other counts, and the full sentence of the law and this court has been executed upon him for the same matters and things herein alleged in plaintiff's said libel of information; and that all and singular of

said matters upon said trial were tried and inquired into and fully heard, and on the hearing thereof the jury, duly impaneled and sworn, found said W. More Young guilty as to part and not guilty as to other of said charges.

And claimants further aver that at the time of the alleged commission of the acts for which a forfeiture is sought to be enforced in this action the said W. More Young was one of the owners of all of the property, real and personal, upon which a forfeiture could be decreed by this court, and that he ought not to be required to twice suffer for the same offense; and these claimants further aver in this behalf that it is only as stockholders in said corporation of which said W. More Young is and at all the times hereinabove mentioned was a member and stockholder that these claimants are sought to be charged with any notice of the alleged unlawful acts and doings of said corporation.

These claimants aver the foregoing in addition to their answer already on file herein, and expressly reply not only upon this, but upon all of the allegations and denials contained in said original answer. And having fully answered, they pray as they have heretofore prayed in said original answer.

The United States attorney demurred to the amended answer, and upon a question of law raised by this demurrer the district judge entered the following decree (Record, p. 25):

This cause came on regularly for trial before the court, sitting without a jury, a jury trial having been expressly waived in writing, the United States being represented by Willoughby Cole, esq., United States attorney, and the claimants by Messrs. Brousseau and Hatch, and Henry C. McPike, esq.

Whereupon the United States attorney announced to the court that the facts set forth in the amended and supplemental answer heretofore filed by the claimants in this action, and to which a demurrer had been interposed by the United States and overruled by the court, might be considered by the court and taken as true for the purposes of this trial, as if the said facts had been proved by competent witnesses, but that they were insufficient in law to constitute a defense to this action.

Thereupon the United States, by their said attorney, and the claimants by their attorneys aforesaid, submitted the cause to the court for its decision upon the pleadings in said cause, and the said amended and supplemental answer, the facts as to the matter, as already stated, being taken as true, the court, after considering the same, orders and decrees that the libel herein be, and the same is hereby, dismissed.

From this decree of the district court overruling the demurrer and dismissing the libel an appeal was taken by the United States to the circuit court for the ninth judicial circuit, the judgment of the district court was affirmed by the circuit court, and the case is in the Supreme Court by writ of error on behalf of the United States to the latter.

ARGUMENT.

I.

The claimants, Henry Wolters, William Helm, R. H. Austin, and J. H. Coffman, as will be seen by reference to the original answer filed by them (Record, p. 14, par. 1), alleged that they were owners of all the property, real and personal, described in the information, and based

their claim of ownership upon a purchase of the property made by them when the same was sold by the assignee of the Fruitvale Wine and Fruit Company on the 9th of June, 1888, the purchase price being $7,700.

In the amended answer, which contains the defense to the libel of information which was considered by the court below, there is no allegation of ownership on the part of the claimants, but the district judge, in his decision (Record, p. 29), considers the fact that the claimants filed the original answer and set up a claim to the property as purchasers at the said sale. He holds, however (Record, p. 32), that this claim can not be sustained, and he bases his decision in this respect upon the principle laid down in *United States* v. *Stowell* (133 U. S., 1).

The district judge then proceeds and in substance decides that these claimants, as stockholders in the Fruitvale Wine and Fruit Company, had a right to intervene as such to claim the property; also holds that to take the property from one stockholder is to take it from all (Record, p. 33); and, further, that the conviction and sentence of Young, also a stockholder in the company, is a bar to a decree of condemnation of the property as forfeited, on the ground that to take the property would punish Young twice for the same offense.

I agree with the district judge that these claimants derive no title, as against the Government, under any sale or change of ownership of the property made by the corporation or its agents after the acts upon which the forfeiture is based were committed.

It is a settled principle that the right of the Government to a guilty thing springs from an offense committed

in, with, or by it, and the title of the Government to forfeited property vests when the criminal act upon which the forfeiture is based takes place. The forfeiture dates back to the time the offense was committed, and operates at that time as a statutory transfer of the right of property to the Government. (*United States* v. *56 Barrels of Whiskey*, 1 Abb. U. S., 93, 4 Int. Rev. Record, 106; *United States* v. *One Cask, etc.*, ibid., 93; *Henderson's Distilled Spirits*, 14 Wall., 56.) In this last case it is held that where a forfeiture is made absolute by statute, the decree of condemnation, when entered, relates back to the time of the commission of the wrongful acts and takes date from the wrongful acts and not from the date of sentence or decree; that subsequent payment of duties upon subjects of taxation removed for the purpose of defrauding the Government is no defense to an information for forfeiture founded upon antecedent wrongful acts; that the effect of the wrongful acts, where the forfeiture is made absolute by statute, is to divest the owner of all property in the goods seized and to vest the title to said property in the United States.

This doctrine is reaffirmed in *United States* v. *Stowell* (133 U. S., 1), and Mr. Justice Gray, in delivering the opinion in that case, says:

> By the settled doctrine of this court, whenever a statute enacts that upon the commission of a certain act specific property used in or connected with that act shall be forfeited, the forfeiture takes effect immediately upon the commission of the act; the right to the property then vests in the United States, although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory

> transfer of the right to the United States at the time the offence is committed; and the condemnation, when obtained, relates back to that time, *and avoids all intermediate sales and alienations, even to purchasers in good faith.*

See also *McVeigh* v. *United States* (11 Wall., 259); *Day* v. *Micou* (18 Wall., 160).

So, then, the law is settled beyond all controversy that a subsequent purchase of this property or an ownership derived after the acts upon which the forfeiture is based were committed does not in any manner affect the title of the United States to the property.

It becomes important, therefore, in this case to determine whether or not these claimants, as mere shareholders in a corporation, could under the law intervene in the proceeding *in rem* for the condemnation of the property. In other words, were they owners or have they such an interest in the property as entitles them to assert it as claimants against a decree of condemnation? If they can claim at all, it is by virtue of the fact that they were stockholders in the corporation known as the Fruitvale Wine and Fruit Company.

In 15 Opin. Atty. Gen., 230 (reported in 23 Int. Rev. Rec., 141), it is held that a corporation may carry on the business of a distiller in its corporate capacity. Then the question is directly presented, whether—when a corporation engaged in the business of distilling, operated by its agent, commits a crime which works a forfeiture of its property—a part of the individual stockholders can intervene to claim the property of the corporation in the proceeding *in rem* instituted by the Government to condemn it?

"As a general rule, a corporation is to be regarded as a legal entity, separate and apart from the persons composing it." (7 Am. and Eng. Encycl. Law, 2d ed., 633.)

"The individuals composing these associations are united in one body and the *members lost* in the corporate existence. *It is not the individual members, but the legal being which acts and transacts business.*" *People* v. *Watertown*, 1 Hill (N. Y.), 616; (*Niagara County* v. *People*, 7 Hill (N. Y.), 504.)

In *Fietsam* v. *Hay* (122 Ill. 293) the court says:

> It will be kept in mind that the corporate body, for purposes of *ownership*, and, indeed, for most purposes, has a distinct identity from that of the individual corporators. The latter may be wealthy when at the same time the former is insolvent, and *vice versa*. The corporation has no right to appropriate, sell, or otherwise dispose of any of the property or effects of a corporator. The relation of debtor and creditor may subsist between them in the same manner as between the company and other persons. The company's entire property may be swept away from it by sequestration, or other means, and yet its franchises will remain vested in the corporators until they are either abandoned or forfeited to the State. All these propositions are familiar to the courts and the profession, and are well sustained by authority.

"*The corporators have no legal interest in the corporate property; it could not be levied on or taken by execution for the particular debt of the corporator.*" (7 Am. & Eng. Encycl. Law, 2d ed., 635.)

I wish to impress the point that the courts below necessarily treated the claimants as entitled to intervene, by

reason of the fact that they were stockholders in the corporation, and not because they were purchasers of the property after the forfeiture, or otherwise became entitled to it subsequent to the criminal acts of Young. That I am correct in this position will be observed upon an examination of the opinion of the district judge printed in the record, beginning on page 26. The judge, in discussing the right to the property which vested in the Government in 1887, says:

> When that right accrued, Young, as an owner of stock in that corporation, had an interest in every part and parcel of the property of the company. The Government had the right to proceed by civil action to enforce the forfeiture of the property because of the frauds, or to prosecute the parties engaged in it criminally; but for the same acts it could not do both. * * *

And further in the opinion, page 33, the judge says:

> To take the property in which he has an interest is to take his property; and for the same acts and omissions to punish him criminally, and also take his property is, for the same offences, to punish him twice.

Then says the district judge further (Rec., p. 33), in the conclusion of his opinion:

> The circumstance that Wolters, Helm, Austin, and Coffman have not been prosecuted for the fraudulent acts and omissions that are made the basis of the present action does not relieve the Government's case of the difficulty. *To take the property from one stockholder is to take it from all, and I can see no valid reason why the plea in bar of the action may not be interposed by anyone interested in the property.*

It will thus be seen that the district judge in this opinion based the right of claimants expressly upon the ground that they were stockholders in this corporation and had such a community of interest with Young that to forfeit their interest would also forfeit Young's interest, and vice versa.

I contend that the right of property, the ownership of property, which would give the right to make claim and defend in this case, belongs to the corporation called the Fruitvale Wine and Fruit Company, and that a private stockholder could not be heard to assert an interest in the tangible property of the corporation, or to defend it from the liabilities or obligations alleged to have been incurred by the corporation, until it should appear affirmatively that the legally constituted authorities of the corporation had refused or neglected to act.

The doctrine is definitely declared in *Van Allen* v. *The Assessors* (3 Wall., 573), in passing upon the ownership of the property of a national bank, that—

> The corporation is the legal owner of all the property of the bank, real and personal;

and in the case of *The Owensboro National Bank* v. *The City of Owensboro*, decided at the present term, the Van Allen Case is cited and the principle above stated reaffirmed.

None of these authorities are in conflict with the decision in *United States* v. *Wolters et al.* (46 Fed. Rep., 509), which is relied upon by the claimants, even if that decision is held to be the law by this court.

The liability of a stockholder in a corporation for the corporate obligations, under certain contingencies, does

not change the general doctrine that the corporation and not the individual shareholder is the legal owner of the tangible corporate property. And, further, the decision in the Wolters case is based upon a statute of the United States, which declares that—

> Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or other distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

The suit against Wolters and others was for taxes, and the court held that as shareholders in a corporation they did have an interest in the distillery and property such as to make them liable for taxes under that statute; but the court did not hold that these shareholders had any legal ownership of the property such as would entitle them, or any one of them, to assert it in a legal proceeding in which the title to the property was at issue. I call the attention of the court to the fact that the defendants in that case, Wolters et al., being the identical persons who are claimants in this case, set up the defense that stockholders are neither proprietors nor possessors of the corporate property and insist upon the very proposition which I contend for here.

I submit, therefore, that these four individual holders of certificates of stock in the corporation known as the Fruitvale Wine and Fruit Company have no such interest in the tangible property of the corporation as would entitle them to intervene as claimants and defend the property in this case, and the same principle applies to Young as a stockholder in the corporation.

II.

Still, a further view of the case to be considered in connection with the right to claim and defend property is that Young does not appear as a claimant at all. He does not undertake to assert any interest whatever in the property, and, so far as can be gathered from the record, he is entirely content that whatever right he may have had in the property be forfeited. Wolters, Helm, Austin, and Coffman are seeking to save the property to themselves on the ground that to condemn the same takes it from Young and thus inflicts upon him an unauthorized punishment, when, in fact, Young himself sets up no such contention.

In *Semmes, plaintiff in error*, v. *United States* (91 U. S., 21–25), the court, according to my understanding, settles the principle that the owner of property proceeded against by libel of information is remediless, unless he avails himself of the opportunity to make his claim and defend his right as against the Government. He will not be permitted to stand silent and obtain the same relief as he might be entitled to if he availed himself of the remedy provided by law—that is, to come into court and defend the property by asserting his claim and setting up his title and interest in the property. And in the Semmes Case the court also decides that where a libel of information alleged the property proceeded against to belong to one person, when, in fact, a part of it belonged to others, the decree of condemnation will carry with it the interest and title of all persons whatsoever, for the

proceeding is against the *res* and not against the owner or owners.

If, therefore, the failure of Young to come in and by his formal pleading in the proceeding *in rem* assert his claim and defend his interest in the property entitles the Government to a decree of condemnation as to this interest, then the whole fabric of the district judge's decision (which was affirmed by the circuit court) falls; for this decision is placed expressly on the ground that Young's ownership of stock in the corporation gave him "an interest in every part and parcel of the property of the company."

I refer the court in this connection to the fact, further, that Wolters, Helm, Austin, and Coffman were never prosecuted criminally and therefore there can be no suggestion that to forfeit the property is punishing them twice for the same offense, though they were shareholders in the corporation at the time that it, through its agent, committed the criminal acts upon which forfeiture is based.

III.

That the property was forfeited to the Government and the title thereto transferred by the criminal acts of the agent, Young, and at the time the said acts were committed, can not be disputed. I have already cited authority to the effect that a corporation can carry on the business of a distiller of spirituous liquors. The corporation must necessarily act by an agent. Young was the agent of this corporation to operate the distillery. The acts of the agent are imputed to the principal so far

as they work a forfeiture of property used for unlawful purposes. (*Bush* v. *United States*, 31 Int. Rev. Rec., 305; *United States* v. *Buchanan*, 28 Int. Rev. Rec., 51.) And if Young was in possession of this distillery and operating it with the assent of the owner, under the rule laid down in the case of *Dobbins' Distillery* v. *United States* (96 U. S., 395), the commission of unlawful acts by Young which worked a forfeiture in connection with the distillery would forfeit the property, although such acts were unknown to the owner.

In Dobbins' case the distillery was being operated by a lessee, who neglected and refused to keep certain books required by law and to make the required entries in the same; who also made false entries in the distillery books and omitted to enter in said books the facts required by law with intent to defraud the revenue and to conceal from the revenue officers facts and particulars required to be stated, etc. The distillery and property connected with it were seized and a libel of information filed. The owner and lessor of the distillery appeared and made the defense, in substance, that he had no knowledge of the criminal acts of the lessee; that he was no party to the same, etc.; and Mr. Justice Clifford, in delivering the opinion of the court in this case, says:

> Nothing can be plainer in legal decision than the proposition that the offence therein defined is attached primarily to the distillery, and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner, beyond what necessarily arises from the fact that he leased the property to the distiller, and suffered it to be used and occupied by the lessee as a distillery.

And he says further:

> Cases often arise where the property of the owner is forfeited on account of the fraud, neglect, or misconduct of those entrusted with its possession, care, and custody, even when the owner is otherwise without fault.

And Waples, in his "Proceedings in rem," under the head of "Forfeiture of land as a guilty thing," says:

> Lands are forfeited when used in contravention of law. The violation of law by the use of land is in some instances, by the owner, but not necessarily so. It is not the owner's guilt, but the land's guilt, by its use, that renders it forfeit. There is an offending person and an offending thing, but the proceedings are against the latter.

In the case we are considering the facts present the grounds of forfeiture more strongly than in Dobbins's case. In the latter the owner of the distillery permitted it to be operated by a lessee, and his criminal acts, without the knowledge or consent of the owner, were held to forfeit the property, whilst in our case the owner, a corporation, was itself operating the distillery by its duly authorized agent, and he committed criminal violations of law which work a forfeiture.

IV.

Having discussed these views of the questions, which I think arise, I come now to the principal point involved, being the one upon which the court below dismissed the libel of information. This question arises upon the contention of the claimants, and the decision of the district court (which was affirmed by the circuit court) that

Young, as a stockholder in the corporation called the Fruitvale Wine and Fruit Company, had an interest in the property of the company, which interest must be treated in this proceeding as an ownership of the entire property; and that to proceed to condemn the property by decree of forfeiture, and thus divest Young of said interest and ownership, after his conviction and sentence in the criminal indictment, for the acts upon which the forfeiture is based, would twice punish him for the same offense. The court below gives the decision in the case of *The United States* v. *McKee* (4 Dillon, 128), as grounds for the decision in this case. I submit, should it be held that the principle decided in McKee's Case is sound law, that the two cases are not at all similar. McKee had been indicted, convicted, and punished under section 5440 of the Revised Statutes. A civil action was subsequently brought against him under section 3296 of the Revised Statutes to recover the penalty of double the amount of taxes on distilled spirits, out of which it was alleged the Government had been defrauded by means of a conspiracy entered into for that purpose by the defendant and certain distillers for the unlawful removal by them of the said spirits without the payment of the taxes. In the civil action the defendant pleaded in bar his conviction and punishment, alleging that it was for the same acts as those for which a penalty was sought to be recovered; and the court held that if the specific acts of removal upon which the civil suit was based were the same as proved in the indictment, then the former judgment was a bar to a recovery in the civil action. In other words, that, McKee having been convicted and

punished for conspiracy under section 5440, it would twice put him in jeopardy if a part of the punishment prescribed for the offense of removal and concealment of distilled spirits, as provided in section 3296, was visited upon him.

In the case at bar Young was convicted of a violation of section 3451 of the Revised Statutes, which reads as follows:

> Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term of not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited.

It will be seen that under this section the measure of punishment is imprisonment and the forfeiture of the property.

A question almost precisely similar to the one in the case under consideration is found exhaustively discussed by Mr. Justice Blatchford, at circuit, *in re Samuel H. Leszynsky*, reported in 16 Blatchford, 9. There the relator, Leszynsky, was sued by the United States in a civil action for a penalty imposed under section 3318 of the Revised Statutes, which reads as follows:

> Every rectifier and wholesale liquor dealer shall provide a book, to be prepared and kept in such form as may be prescribed by the Commissioner of

> Internal Revenue, and shall, on the same day on which he receives any foreign or domestic spirits, and before he draws off any part thereof, or adds water or anything thereto, or in any respects alters the same, enter in such book, and in the proper columns respectively prepared for the purpose, the date when, the name of the person or firm from whom, and the place whence the spirits were received, * * * and whenever any rectifier or wholesale liquor dealer refuses or neglects to provide such book or to make entries therein as aforesaid * * * he shall pay a penalty of one hundred dollars, and shall (on conviction) be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Leszynsky, in the civil action, confessed judgment for the amount sued for, and the same was thereafter paid, together with the costs, and the judgment satisfied. After the judgment was thus satisfied Leszynsky was charged before a United States commissioner with the criminal violation of the said section and arrested upon a warrant in the hands of the United States marshal. At the hearing before the commissioner Leszynsky was held for trial and committed to the custody of the marshal. Upon application for writ of habeas corpus, in which the relator set up that in consequence of the proceedings in the civil action he was not liable to be again arrested, held, detained, tried, convicted, or punished for the same cause, and that an arrest and detention under said warrant was for the same cause for which he was punished by the payment of said judgment, Justice Blatchford held that

the plea was bad, and the application was denied. In the opinion the learned justice says:

> It is to be noted that section 3318 provides distinctly that whenever any rectifier or wholesale liquor dealer does what is specified therein he shall pay a penalty of $100, and shall, on conviction, be fined and imprisoned. No more distinct form or construction could have been adopted to indicate the intention of Congress to provide cumulative penalties or punishments, three in number, each in addition to the other two—a penalty of $100 to be recovered by a civil action, and fine and imprisonment to follow conviction on a criminal prosecution. But, in the eye of the law, the three punishments are only one punishment for the same offense, although the penalty of $100 may be recovered in a civil action and the fine and imprisonment are inflicted by a criminal prosecution. The statute book has many like provisions for punishment of offenses where a penalty to be recovered by a civil action is given and a fine and imprisonment, or one of them, on a criminal conviction, is prescribed in addition and cumulatively, by the use of the word "and." Provisions for punishment by the forfeiture of property, which must be enforced in a civil action, and, cumulatively and in addition, by fine and imprisonment, or one of them, on a criminal conviction for the same offense for which the forfeiture of property is prescribed, are of the same character. Where the same section of the statute contained the description of the offense, and the prescription of the penalty by civil suit, and of the punishment on a criminal conviction, the two connected by the copulative "and," no other construction is proper than that the whole is one punishment, and that the whole can not be satisfied by a part. Reference, for pro-

visions of the above descriptions, in the same title in which section 3318 is found, may be had to sections 3257, 3258, 3259, 3260, 3279, 3292, 3296, 3326, 3340, 3342, 3360, 3370, 3380, and 3401. Penalties and forfeitures given by statute are to be enforced by civil suits. Fine and imprisonment are to be inflicted as the result of a conviction on a criminal prosecution. Different methods are to be resorted to to enforce the different parts of what is one and the same punishment, but the fact that the two methods may be progressing simultaneously and one be completed before the other, or that one may be fully completed before the other is commenced, can not have the effect to annul the provision of law in regard to the uncompleted part.

If the indictment and conviction of McKee had been under section 3296 instead of 5440, then, according to the principle of law decided in the Leszynsky Case, the Government could have recovered the penalty in double the amount of the tax imposed upon the distilled spirits which McKee was shown to have removed or concealed without payment of the tax; this being a part of the punishment prescribed by that section. Many statutes of the United States can be found, both under the internal-revenue laws and the customs laws, in which criminal violations are punished by fines or imprisonment, or both, inflicted upon the offending person, and the forfeiture of the offending property.

In *Boyd, claimant*, v. *United States* (116 U. S., 616,) the doctrine which is here contended for on behalf of the Government is upheld. The case was a proceeding *in rem* to forfeit certain goods under the twelfth section of

the act of June 22, 1874. That act provided that certain acts or fraud committed against the public revenue in relation to imported merchandise should be criminal, and that the offender should be fined not exceeding $5,000, nor less than $50, or be imprisoned for any time not exceeding two years, or both; and, in addition to such fine, such merchandise should be forfeited. Mr. Justice Bradley, in delivering the opinion of the court, says:

> These are the penalties affixed to the criminal acts; the forfeiture sought by this suit being one of them. If the indictment had been presented against the claimants, upon conviction the forfeiture of the goods could have been included in the judgment.

It being thus expressly declared that the forfeiture provided in the act constituting the criminal offense for which the offending person is liable to punishment follows the conviction of such person.

In *Coffey* v. *United States* (116 U. S., 436) it is held that an acquittal of the offending person is a bar to a proceeding in rem for the condemnation of property in connection with which the criminal acts were committed, and this upon the ground that—

> where an issue raised as to the existence of the act or fact denounced has been tried in a criminal proceeding, instituted by the United States and a judgment of acquittal has been rendered in favor of a particular person, that judgment is conclusive in favor of such person, on the subsequent trial of a suit *in rem* by the United States, where, as against him, the existence of the same act or fact is the matter in issue, as a cause for the forfeiture of the property prosecuted in such suit *in rem*.

The reason and soundness of this principle are readily seen, because in the issue between the United States and the person charged with the commission of the acts which are the basis of forfeiture it is determined that the acts were not committed, and the facts did not exist. Consequently there was no forfeiture, because the acts must have been committed and the facts must have existed at the time in order to vest the title of the offending thing in the Government as forfeited property. The case here is directly the converse of the Coffey case, because in the trial upon the indictment the issue was found against Young, the offending person, and it was ascertained by such finding that the criminal acts were committed by Young, and the facts did exist, which forfeited the property to the United States. And, in the opinion in the Coffey case, the Supreme Court substantially sustains this view when it says (p. 443):

> Whether a conviction on an indictment under section 3257 could be availed of as conclusive evidence in law for a condemnation in a subsequent suit in rem under that section, and whether a judgment of forfeiture in a suit *in rem* under it would be conclusive evidence, in law, for a conviction on a subsequent indictment under it, are questions not now presented.

Can anyone read this quotation from the opinion and say that the court entertained any other view than that a proceeding *in rem* for the forfeiture of property, declared by law, would follow the conviction of the person upon whose criminal act the forfeiture was based, and *vice versa?* In other words, that the fact that the offending

person had been convicted was not a bar to the proceeding *in rem* against the offending thing, the only question being whether the conviction and judgment of the offending person could be availed of as conclusive evidence in the proceeding against the property; and whether, if the proceeding *in rem* had been instituted and concluded by a decree of condemnation, that judgment was available as conclusive evidence upon a subsequent trial of an indictment against the offending person.

Finally, there is no doubt about the proposition that if the Fruitvale Wine and Fruit Company, by Young, its authorized agent, committed the criminal acts charged as alleged in the libel of information, then this distillery, property, etc., were at the time of the commission of the said acts forfeited to the United States and the title to the same became vested in the United States. It has been ascertained by the verdict of a jury upon the issue raised between the United States and Young in a criminal indictment charging him with these acts that in the month of August, 1887, he did commit the acts. The distillery, etc., therefore, were in the said month of August, 1887, forfeited to the United States and the title thereof became vested in the United States. Then, what has occurred since to divest the Government of its title? It is well settled that the sale made by the assignee under the assignment of the Fruitvale Wine and Fruit Company on the 9th of June, 1888, at which these claimants purchased, did not affect the right of the Government, and it is equally well settled that the subsequent payment of taxes assessed upon the distilled spirits unlawfully removed could in no wise impair the property

of the Government in the offending thing. This leaves the sole proposition that the conviction and punishment of Young is a bar to the decree of condemnation in the proceeding *in rem*, and it was upon this ground that the courts below overruled the demurrer of the United States to the amended answer of claimants and dismissed the libel of information.

I insist that this action of the lower courts was erroneous and should be reversed.

JAS. E. BOYD,
Assistant Attorney-General.

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No. 190.

Brief of Hall for U. S.

FILED
JAN 3 1899
JAMES H. McKENNEY
Clerk

Filed Jan. 3, 1899.

No. 1852.

In the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

ONE DISTILLERY, ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN AND J. H. COFFMAN, CLAIMANTS OF SAID ONE DISTILLERY, ET ALIA.

In Error to the Circuit Court of the United States for the Southern District of California.

Brief for Claimants.

FREDERIC W. HALL,
Attorney for Claimants,
San Francisco, Cal.

Filed this ..... day of ..... 1899.

..... *Clerk.*

By .....

Deputy Clerk.

IN THE

Supreme Court of the United States.

UNITED STATES OF AMERICA,
Plaintiff in Error,

VS.

ONE DISTILLERY, ET ALIA, AND HENRY WOLTERS, WILLIAM HELM, R. H. AUSTIN AND J. H. COFFMAN, CLAIMANTS OF SAID ONE DISTILLERY ET ALIA.

No. 16,712.

In Error to the Circuit Court of the United States for the Southern District of California.

Brief for Claimants.

STATEMENT OF CASE.

This is an action to condemn a certain distillery and distillery property and have them declared forfeited to the Government on account of certain alleged frauds against the Internal Revenue Law.

The Fruitvale Wine & Fruit Company, a corporation, was, during the year 1887 and up to June 9th, 1888, the owner of a certain distillery and distillery property situated near the City of Fresno, State of California. The distillery was operated by that corporation from June 1887 up to the end of that year. During all of that time, W. More Young was the secretary, the managing director and one of the principal owners in the corporation and was in charge of the distillery business.

The claimants in this action were small stockholders in that corporation but had nothing to do with its management and had no actual knowledge of any of the frauds or acts mentioned in this proceeding.

Early in 1888 and before any trouble arose with the Government, the Fruitvale Wine & Fruit Company became insolvent, and all its property, including the distillery, was sold at public auction on June 9th, 1888, and was purchased by the claimants for Seven Thousand Seven Hundred ($7,700) Dollars. The claimants thereupon took possession of the property and thereafter conducted the distillery business themselves as partners.

On the 20th day of June 1888, the distillery and distillery property were seized by the Collector of Internal Revenue on account of certain frauds, concealments and removals of distilled spirits, and other fraudulent acts alleged to have been committed by the Fruitvale Wine & Fruit Company during the latter part of the year 1887, while that corporation was the owner and in possession and carrying on the business. The property seized was on said seizure appraised at Seven Thousand Two Hundred ($7,200) Dollars. Afterwards, the property was released to claimants, who then improved and added to it.

On or about November 2nd, 1888, the distillery and distillery property, with all the property added to it by the claimants, all appraised at $35,000, were again seized by the Collector of Internal Revenue for the same frauds, concealments, removals of distilled spirits, and other fraudulent acts alleged to have been committed by the Fruitvale Wine & Fruit Company in the latter part of 1887 above mentioned.

On this last seizure made on or about November 2nd, 1888, the present forfeiture proceeding is brought under Sections 3257, 3281, 3305, 3453 and 3456 of the Revised Statutes. Claimants gave bond and the property was released to them on or about November 28th, 1888.

On December 8th, 1888, the property was again seized by the collector for the unpaid taxes, out of which it was alleged the Government had been defrauded by the Fruitvale Wine & Fruit Company in the latter part of 1887 by means of the above frauds. The claimants, in order to recover said property, paid to the Government the sum of Three Thousand Three Hundred and Ninety-two ($3,392) Dollars, the amount at which the Collector then assessed the unpaid taxes, and the property was again released to the claimants.

Thereafter, on December 20th, 1888, the said W. More Young, who was a large stockholder and managing director, secretary and book-keeper of the Fruitvale Wine & Fruit Company during all of the year 1887 and up to the time the property was sold to the claimants, and during the time the frauds are alleged to have been committed, was indicted, under Section 3451 of the Revised Statutes, for directly committing, as secretary of that corporation, certain illegal acts by means of which the frauds, concealments, removals and other fraudulent acts set out in the libel of information in this action were perpetrated; and on February 20th, 1889, he was convicted on one count of said indictment and sentenced to one year's imprisonment and acquitted on the remaining counts. (Transcript, p. 20-24.) (Transcript, p. 19, folio 37.)

The above facts and the trial and conviction and acquittal of W. More Young were by the claimants set up by their answer to said libel as a bar to the forfeiture proceedings in the District Court before Judge Ross. The amended answer contained these statements, to wit:

"That the alleged fraud, concealments, and removal of distilled spirits, and the other alleged fraudulent acts contained in said libel of information, are the same frauds, concealments and removals of distilled spirits and other alleged fraudulent acts inquired of and investigated upon the trial of said W. More Young hereinabove mentioned, and in respect of which he was convicted and acquitted in manner aforesaid.

"And these claimants further aver that all of the evidence which would be necessary to establish, and competent under, the various assignments and charges of fraud set out in plaintiff's libel of information herein, was used and introduced upon the trial of said Young; and that the various charges of fraud and causes of forfeiture alleged by plaintiffs herein relate to the same subject matter and are based on the same transactions as the various allegations in said indictment contained, and about which inquiry was made upon the trial of said Young; and that at the time when said bill of indictment was drawn by the then attorney for the United States, and found by the grand jury, and at all of the times it was considered by said attorney for the United States, all of the facts which would be competent to sustain the allegation of plaintiff's libel of information were known to and within the possession of the said attorney of the United States.

"And these claimants aver and say that the United States "ought not to maintain its action herein for the penalty de- "nounced by section 3451, and other sections of the Revised "Statutes of the United States under which the said libel of "information was drawn, for the said W. More Young was "tried and convicted in this court in manner aforesaid, as to "one of the counts of said indictment and acquitted as to other "counts, and the full sentence of the law and this court has "been executed upon him for the same matters and things "herein alleged in plaintiff's said libel of information; and "that all and singular of said matters upon said trial were "tried and inquired into and fully heard, and on the hearing "thereof the jury, duly impaneled and sworn, found said W. "More Young guilty as to part and not guilty as to other of "said charges" (Transcript, pages 19, 20, folios 38, 39).

The first count in the libel alleges that the barrels containing proof brandy and high proof spirits, seized by the Government, were found on or about the 1st day of June 1887 in the possession, custody and control of the Fruitvale Wine & Fruit Company for the purpose of being sold and removed by that Company in fraud of the revenue laws (Transcript, page 11, latter part of folio 22). This is specifically denied by claimants, who allege in their answer that they did not purchase from the Fruitvale Wine and Fruit Company any of the brandy or alcohol or high proof spirits or any of the barrels containing the same, seized by the Government, and none of said property last mentioned was ever in the possession of that Company (Transcript, page 16, allegation IX of answer).

The Government demurred to the answer and amendment to answer on the ground that they were not sufficient to constitute a defence.

The demurrer was overruled and on the trial the Government *admitted the allegations of the answer and amendment to be true* and submitted the case upon the pleadings, and the libel was thereupon dismissed by the District Court (Transcript, p. 25, folio 50).

The opinion of the District Court was given at length and is set out in the transcript on pages 26 to 33 inclusive.

From the District Court, the United States by writ of error took the case to the Circuit Court where the decision of the lower court was affirmed. From the Circuit Court the United States has again taken the case by writ of error to this Court.

Since the trial in the District Court certain other proceedings have been taken by the Government in connection with

this matter, which of necessity do not appear in the record; but they have been admitted by the Government on all previous arguments and we presume will be admitted on this argument.

The proceedings were these:

Subsequently to the seizures, payments and proceedings above set out, the United States claimed that the unpaid taxes out of which it had been defrauded by the Fruitvale Wine & Fruit Company in 1887 amounted to more than the $3392.00 paid by claimants on the seizure of December 8th, 1888.

The Government thereupon brought suit against the claimants alone as former stockholders in that Company for all the unpaid taxes of the Fruitvale Wine & Fruit Company, and in December 1891 judgment was recovered against the claimants for $15,712.60 in addition to the sums already paid by them, and this amount they have also been compelled to pay although they were hardly more than nominal stockholders in that corporation and had no knowledge of, and were not parties to, the fraud. Yet under the rule laid down in that case (U. S. vs. Wolters, 46 Fed. Rep., 509), they have been compelled to pay the taxes of the entire company. So it has practically amounted to another seizure of their property.

So these claimants have been compelled to bear all the burdens of the Fruitvale Wine & Fruit Company, and have been compelled to pay all the taxes claimed to be due from it amounting to $19,104.60, and have suffered three seizures of their property with the attendant damage to business already, all on account of the sins of the former owner of a small part of the property seized.

The Government has recovered from the claimants all the taxes due it from the Fruitvale Wine & Fruit Company with costs; has subjected them to three seizures; has sent W. More Young who perpetrated the frauds to jail for a year; and is now seeking as additional punishment for those frauds, to have declared forfeited to it not merely the $7,700 worth of property purchased by claimants from the Fruitvale Wine & Fruit Company, but also the $27,300 worth of property added by the claimants.

We submit that the Government has done very well, even if it never gets the distillery.

Our claim is that the former proceedings are a bar to the forfeiture proceedings.

We claim that the taxes having been collected in separate suits, and nothing being due the Government, this action is

not civil in any sense but is strictly an action to inflict punishment and is therefore a criminal action.

And in particular, we claim that having by a term of imprisonment criminally punished W. More Young, who was one of the owners of the property at the time, for the frauds complained of, the Government cannot now in this independent action inflict a second punishment for the same frauds by declaring the distillery property formerly belonging to Young forfeited.

POINTS AND AUTHORITIES.

I.

W. More Young was at the time he committed the frauds complained of a stockholder in the Fruitvale Wine & Fruit Company.

In *U. S.* vs. *Wolters*, 46 Fed Rep. 509,

it was held that, so far as the United States is concerned, the stockholders in a distillery corporation have the same rights and are subject to the same liabilities as partners, or joint owners, each owning the entire property.

The stockholder is not, under the above decision, the mere owner of stock in a corporation which owns the property; but in his dealings with and relations towards the United States, he is a direct owner of the property of the corporation.

The rights and liabilities of Young towards the Government are therefore the same as though he owned the entire distillery property. Therefore the fact that W. More Young was at the time he perpetrated the frauds complained of a stockholder in the Fruitvale Wine & Fruit Company, gives him the right to set up his trial and conviction as a bar as though he was the sole owner of the distillery property at the time.

This right has passed to the claimants as the successors of Young and as the present owners of the property. If the Government has lost the right to have the property condemned as against Young, it has lost it as against his successors in interest. Whatever Young could plead in defense of his property his successors in the ownership of that property can plead.

If it be claimed that the forfeiture took place in 1887 at the time the frauds were committed, and that the sale to the claimants on June 9, 1888, is void for all purposes, the result will be the same.

Let us suppose all these proceedings are moved back to a time antidating that sale, and that Young and claimants still own the property, as they owned it then, as stockholders in the Fruitvale Wine & Fruit Company.

This proceeding is brought to forfeit the property. Young has been already punished criminally for the offense, and to take this property is to take his property and punish him twice. He can, therefore, as a person interested in the property plead once in jeopardy, and if sustained his property cannot be taken.

But the claimants are also stockholders as well as Young, and under the above decision each directly owns the entire distillery property as well as Young. The interests cannot be segregated. The property of claimants cannot be taken without taking that of Young. As the property of Young cannot be taken, none of it can be taken.

The claimants are claiming for the benefit of all interested parties in accordance with the admiralty practice by which this proceeding is governed.

Whatever right one of the joint owners has against third parties, that right each and all joint owners have against third parties.

The above points were admitted by the Government on the argument in the Circuit Court.

It is alleged in claimants' amendment to answer that the alleged frauds, concealments and removal of distilled spirits and the other alleged fraudulent acts contained in said libel of information are the same frauds, concealments and removals of distilled spirits and other fraudulent acts inquired of and investigated upon the trial of said Young and in respect of which he was convicted and acquitted, and that all the evidence which would be necessary to establish, and competent under the various assignments and charges of fraud set out in the libel, was used and introduced upon the trial of Young; the charges of fraud and causes of forfeiture alleged in the libel relate to the same subject-matter and are based on the same transactions as the various allegations in the Young indictment and about which inquiry was made on his trial.

All this is admitted by the Government. (Transcript, p. 25, folio 50.)

That is, it is admitted that the Government is seeking in this proceeding to have the property declared forfeited for the same offenses for which Young was tried and convicted or acquitted.

The question is presented as though Young, being the sole owner of the property, and having been theretofore indicted and tried for committing certain frauds on the Government, and having been convicted and punished by imprisonment for committing one of them and acquitted of the rest, was, as claimant, pleading his own prior conviction and acquittal as a bar in a proceeding by the Government to forfeit his property for the same fraudulent acts for which he had been theretofore tried and convicted or acquitted.

II.

This forfeiture proceeding is barred by the trial and conviction and acquittal of W. More Young. By this action to declare the property forfeited Young is placed twice in jeopardy.

It will be observed that the Government is not seeking to recover compensation by this proceeding for damages which it has sustained by the unlawful act, nor to recover anything claimed to be due it; for the unpaid taxes about which all the trouble arose have been recovered. This proceeding is solely for the purpose of inflicting a second punishment on a party who attempted to defraud the Government of taxes, by depriving him of his property by forfeiture, after having already imprisoned him for the same acts under an indictment.

Young has been once in jeopardy; and we claim that this proceeding to forfeit his property for the same acts for which he has been once tried, convicted, and punished or acquitted, is barred by that part of Article V. of the Amendments to the Constitution of the United States, which declares "nor shall "any person be subject, for the same offense, to be twice put "in jeopardy of life and limb."

That this clause of Article V. of the Amendments does not apply merely to cases where an attempt is made to try a person twice for any offense punishable by loss of life and limb, but applies to all cases where it is sought to *punish* a person twice for an *offense*, is well settled.

Story on the Constitution, Sec. 1787 (Third Edition), explains the clause as follows: "The meaning of it is, that a "party shall not be tried a second time for the same offense, "after he has once been convicted or acquitted of the offense

"charged by the verdict of a jury, and judgment has passed "thereon for or against him."

In ex parte Lange, 18 Wallace 163,

the Court says in construing the cause: "If there is anything "settled in the jurisprudence of England and America, it is "that no man can be twice lawfully punished for the same "offense. * * * There has never been any doubt of its en- "tire and complete protection of the party when a second pun- "ishment is proposed in the same Court, on the same facts, for "the same statutory offense." The same case cites with approval Bishop on Criminal Law, Secs. 990-991 (Fifth Edition), saying that this provision of the Constitution applies to both felonies and misdemeanors; and also Chitty (1 Cr. L., 452-462) who drops the words "life and limb" and declares that the pleas of prior conviction or acquittal "depend on the principle "that no man shall more than once be placed *in peril of legal* "*penalties* upon the same accusation."

Ex parte Lange continues: "If we reflect that at the time "this maxim came into existence, almost every offense was "punishable with death or other punishment touching the "person, and that these pleas are now held valid in felonies, "minor crimes, and misdemeanors alike, and on the difficulty "of deciding when a statute under modern systems does or "does not describe a felony when it defines and punishes an "offense, we shall see ample reason for holding that this prin- "ciple intended to be asserted by the constitutional provision "must be applied *to all cases where a second punishment is at-* "*tempted to be inflicted for the same offense by a judicial sentence.*" It is evident from the above that the plea of "once in jeopardy" may be interposed not merely in cases where the pleader's "life or limb" is in danger, but in all cases where it is sought to inflict any kind of a punishment on him.

It is also evident that the nature of the proceeding by which it is sought to inflict the second punishment is immaterial. The constitutional question is, "is it a proceeding which will "punish the same person twice for the same offense?" And it seems to us the 5th Amendment is a bar, if the proceeding *in rem* to have Young's property declared forfeited for an offense committed by him can be considered as actually *punishing him* for that offense.

By a fiction of law a proceeding *in rem* to forfeit the property used in connection with the commission of an offense has been considered a proceeding to punish the *property* as a guilty party, evidently based upon the old law of *deodands*. As long

ago as 1786 the Fifth Edition of Bacon's Abridgment closed its chapter on deodands by saying: "As this forfeiture "seemeth to have been originally founded rather in the super- "stition of an age of extreme ignorance, than in the principles "of sound reason and true policy, it hath not of late years met "with great countenance in Westminster Hall." Some progress ought to have been made since that time; and the fiction that declaring an inanimate thing forfeited to the Government punishes the thing, and not the thing's owner, ought in 1899 to be pretty well exploded.

In *Boyd, Claimant*, vs. *United States*, 166 U. S., 616, decided in 1885, this Court had under consideration a proceeding to forfeit property similar to the proceeding in this case. Section 5 of the Act of June 22, 1874, declares that "In "all suits and proceedings other than criminal arising under "any of the revenue laws," claimant may be compelled to produce his books in Court to be used by the Government as evidence, or the allegations of the Government as to the contents of the books shall be taken as confessed. Claimant had refused to produce his books, claiming that the proceeding *in rem* to forfeit the property was a *criminal action against him*, and he was protected by that part of Amendment 5 of the Constitution which declares that no person "shall be compelled in any "criminal case to be a witness against himself." It is evident that unless a proceeding *in rem* to forfeit property could be considered a criminal action—that is an action to punish for an offense—and unless the owner and claimant could be considered the real party defendant, and the evidence "against himself," then the plea could avail him nothing. For it is well settled that in all civil actions, whether in contract or in tort, the defendant can be compelled to be a witness against himself, and to produce his books to be used as evidence against himself. The 5th Amendment could not apply in case it was sought to recover damages or money due, but only in case it was sought to *punish* for an *offense*, for that only would be a criminal case. Neither could it apply unless the fiction that the forfeiture proceedings were against the property and merely punished it, was disregarded, and the proceeding was considered an action against the claimant to punish him for an offense by depriving him of his property if he was found guilty. The Court discusses the case at great length, reviews fully and carefully the half dozen cases in which the Act of June 22, 1874, had been sustained by the Circuit and District Courts, and holds that the proceeding *in rem* is practically a

criminal action to punish claimant for an offense, is a proceeding against him, and is within this prohibition of Amendment 5 of the Constitution. The Court starts out with stating that the law passed originally at the time of the civil war "at a "period of great national excitement, when the powers of the "Government were subjected to a severe strain to protect the "national existence," a remark which will apply to the sections of the Revised Statutes under which this forfeiture is sought; and which gives the cause and excuse for passing laws which overstepped constitutional provisions.

In discussing the question whether a forfeiture proceeding *in rem* is a criminal proceeding the Court says: "We are also "clearly of opinion that proceedings instituted for the purpose "of declaring the forfeiture of a man's property by reason of "offenses committed by him, though they may be civil in form, "are in their nature criminal. In this very case the ground "of forfeiture as declared in the Twelfth Section of the Act "of 1874, on which the information is based, consists of certain "acts of fraud committed against the public revenue in rela"tion to imported merchandise, which are made criminal by "Statute; and it is declared that the offender shall be fined "not exceeding $5000, nor less than $50, or be imprisoned not "exceeding two years or both; and in addition to such fine "such merchandise shall be forfeited. These are the penalties "affixed to the criminal acts; the forfeiture sought by this suit "being one of them. If an indictment had been presented "against the claimants, upon conviction the forfeiture of the "goods could have been included in the judgment. If the "Government prosecutor elects to waive an indictment and to "file a civil information against the claimants (that is, civil in "form) can he by this device take from the proceeding its "criminal aspect and deprive the claimants of their immuni"ties as citizens and extort from them a production of their "private papers, or as an alternative a confession of guilt? "This cannot be. The information, though technically a civil "proceeding, is in substance and effect a criminal one. As "showing the close relation between the civil and criminal "proceedings on the same statute in such cases, we may refer "to the recent case of Coffey vs. U. S., in which we decided that "an acquittal on a criminal information was a good plea in "bar to a civil information for the forfeiture of goods arising "upon the same acts. As, therefore, suits for penalties and "forfeiture incurred by the commission of offenses against the "law are of this quasi criminal nature, we think that they are

"within the reason of criminal proceedings for all the pur-
"poses of the Fourth Amendment of the Constitution, and of
"that portion of the Fifth Amendment which declares that no
"person shall be compelled in any criminal case to be a wit-
"ness against himself, and we are further of opinion that a
"compulsory production of the private books and papers of
"the owner of goods sought to be forfeited in such a suit is
"compelling him to be a witness against himself, within the
"meaning of the Fifth Amendment to the Constitution."

In overruling the cases which had held the act constitutional the Court in the same case says: "*In U. S.* vs. *Mason*, "Judge Blodgett took the distinction that in proceedings *in* "*rem* for a forfeiture the parties are not required by a proceed-"ing under the Act of 1874 to testify or furnish evidence "against themselves, because the suit is not against them but "against the property. But where the owner of the property "has been admitted as a claimant, we cannot see the force of "this distinction; nor can we assent to the proposition that "the proceeding is not, in effect, a proceeding against the "owner of the property, as well as against the goods; for it is "his breach of the laws which has to be proved to establish "the forfeiture, and it is his property which is sought to be "forfeited; and to require such an owner to produce his pri-"vate books and papers, in order to prove his breach of the "laws, and thus to establish the forfeiture of his property is "surely compelling him to furnish evidence against himself. "In the words of a great Judge (Vaughn C. J.), 'Goods, as "'goods, cannot offend, forfeit, unlade, pay duties, or the like, "'but men whose goods they are.'" And again: "The as-"sumption that the owner may be cited as a witness in a pro-"ceeding to forfeit his property seems to us gratuitous. It "begs the question at issue. A witness, as well as a party, is "protected by the law from being compelled to give evidence "that tends to criminate him or to subject his property to for-"feiture. But, as before said, although the owner of goods "sought to be forfeited by a proceeding *in rem*, is not the nom-"inal party, he is nevertheless the substantial party to the "suit; he certainly is so, after making claim and defense; and "*in a case like the present he is entitled to all the privileges* "*which appertain to a person who is prosecuted for a forfeiture* "*of his property by reason of committing a criminal offense.*"

The case of *Boyd* vs. *U. S.* has been cited with approval many times since it was rendered, and there has been no tendency to recede from the law as there declared. Under the reasoning

in that case no other conclusion can be reached but that the present forfeiture proceeding is an attempt to punish Young twice for the same offense, and that he can avail himself of the plea of once in jeopardy as a bar to this action.

To the same effect is:

Lees vs. *United States*, 150 U. S., 476.

This was an action to recover a penalty under the act of February 26, 1885, for importing aliens under contract to labor. The question was whether the defendant could be compelled to be a witness against himself in that case. The Supreme Court said he could not, and further stated that the action "though civil in form is criminal in its nature" and reaffirmed the above case of Boyd vs. U. S.

This position has been taken by able judges in the Circuit and District Courts.

In *U. S.* vs. *McKee*, 4 Dillon, 128,

Justice Miller, sitting in circuit with Judge Dillon, was called to pass upon a very similar case.

The defendant had been indicted, tried and convicted under Sec. 5440 of the Revised Statutes, for conspiring to defraud the Government of taxes. Civil suit was then brought against him under Sec. 3296 of the Revised Statutes to recover double the amount of the taxes as a *penalty* for the same fraudulent acts of which he had been previously convicted. The Revised Statutes do not say the two punishments are in the alternative, or that one is a bar to the other, but prescribe both penalties for the same acts as fully and completely as they can be given by separate sections of the Revised Statutes, and as fully and completely as they are prescribed in this case. The Court considered the only doubt was "whether the offense "in the two proceedings was the same," and said: "For if it "is the same offense, as defined by law, for which he is now "prosecuted, and is also for the same transactions, our laws "forbid that he or any one else shall be twice punished for the "same crime or misdemeanor." And again: "We are, there-"fore, of opinion that if the specific acts of removal on which "this suit is brought are the same which were proved in the "indictment, the former judgment and conviction is a bar to "the present action." It was held that the prior conviction was a bar, and defendant's plea was sustained.

This case is cited with apparent approval in

Coffey vs. *U. S.*, 116 U. S., 445,

and in numerous cases in the Circuit and District Courts, none of which dispute the correctness of the rule there laid down.

The opinion of Judge Ross in the present case sustaining the plea in bar in the District Court for the Southern District of California, is found in 43 Federal Reporter, 846, and on pages 26 to 33 of the transcript. In his decision he states fully the law and the facts and considers the case carefully. Much of the decision is taken up with considering whether the claimants can set up the plea which Young could. The Court held they had the same rights as Young, and this point the Government conceded in the Circuit Court. As to the main point in issue Judge Ross says: "The Government had the right to "proceed by civil action to enforce the forfeiture of the prop- "erty because of the frauds, or to prosecute the parties en- "gaged in it criminally; but for the same acts it could not do "both, according to the ruling in the cases to which reference "has been made." And again: "To take the property in "which he (Young) has an interest is to take his property; and, "for the same acts and omissions, to punish him criminally "and also take his property is, for the same offenses, to punish "him twice."

In *U. S.* vs. *Gates* (5 Law Reporter, 46), an early case in the District Court of the U. S. Southern District, N. Y., set out in *In Re Leszynsky*, hereinafter mentioned, the Court held that a conviction and punishment by fine and imprisonment of the Captain of a ship for smuggling, under Section 19 of the Act of August 30, 1842 (5 U. S. Stat. at Large, 565), was a bar to a civil suit to recover from him the penalty of $400 prescribed for smuggling by Section 50 of the Act of March 2, 1799, (1 U. S. Stat. at Large, 665). The Court held, 1st: "That as the "United States had obtained judgment and inflicted punish- "ment on the defendant for an offense, they were prohibited "by general principles of law from prosecuting him again for "acts constituting the same offense; or, in other words, which "if proved would call for his conviction of that offense." 2nd: "That the punishment prescribed by the Act of 1842 was not "cumulative to that of 1799." Both Sections seem, however, to be in force; and there is nothing in the Act of 1842 declaring that it supersedes the Act of 1799, or that the two punishments are in the alternative.

Just what points the Government will make on this appeal we do not know at this time; but in reply to the above contention of claimants the United States in the Circuit Court urged two points: *First.* That the punishments by fine and impris-

onment and by forfeiture are one punishment for the offense, although two separate proceedings are required to enforce it, therefore Young is not twice in jeopardy. *Second.* That the title to the property sought to be forfeited, vested in the Government when the offense was committed and has never been divested.

To sustain the first point the Government in the Circuit Court relied upon In Re Leszynsky, 16 Blatchford, 9; U. S. vs. Three Copper Stills, 47 Fed. Rep., 497; U. S. vs. Oleson, 57 Fed. Rep., 579, and People vs. Stevens, 13 Wendell, 341.

The first case cited above, on which the Government mainly relied, was decided by Judge Blatchford in 1879 while Circuit Judge, and arose under Section 3318 R. S., which provides that if any rectifier of spirits shall not keep certain books required by law, he shall pay a penalty of $100, and shall, on conviction, be fined and imprisoned. Leszynsky had, after civil suit, paid the penalty of $100. Afterwards he was indicted under the same Section and pleaded the civil judgment as a bar.

The Court held: "Where the same Section of the Statutes "contains the description of the offense, and the prescription "of the penalty by civil suit, and of the punishment on a "criminal conviction, the two connected by the copulative "'and,' no other construction is proper than that the whole "is one punishment, and that the whole cannot be satisfied by "a part.

"Penalties and forfeitures, given by Statute, are to be en- "forced by civil suits. Fine and imprisonment are to be "inflicted as the result of a conviction on a criminal prosecu- "tion. Different methods are to be resorted to, to enforce the "different parts of what is one and the same punishment. "But, the fact that the two methods may be progressing "simultaneously, and one be completed before the other, or "that one may be fully completed before the other is com- "menced, cannot have the effect to annul the provision of law "in regard to the uncompleted part." The Court therefore concludes that the defendant is not twice in jeopardy, but is only being punished once. It does not seem to us that the above reasoning can be correct.

The proceeding to forfeit involves a trial, distinct from the trial on the indictment, a re-examination of the same facts and matters previously inquired into; a re-determination of the question whether the party has committed the offense, and whether he is guilty or innocent; which means that it may be determined in this second proceeding that he is not guilty, that

the offense charged has not been committed, and that he shall not be punished therefor.

What position would the Government and the defendant then be in if it were true that the fine, imprisonment, and forfeiture were all one punishment? Defendant, on his criminal trial under the indictment, has been found guilty of the offense which subjects him to fine and imprisonment; on the trial under the forfeiture proceedings he has been found not guilty of the offense, which releases him from the forfeiture. If the fine, imprisonment, and forfeiture, are all "one punishment" we would like to ask, under such circumstances, "which one?" If the Government cannot split that in two and say there are two punishments, if it must accept the statement in Re Lesznysky, that "the whole is one punishment, and that the whole cannot be satisfied by a part," we would like to know which judgment it could proceed to satisfy; that finding the defendant guilty, or that finding him innocent? For according to that decision the punishment is all one, and must be all one way or the other, while the judgments on which it is based may exactly contradict each other. How can one punishment be pronounced on two opposing verdicts, one of which says the punishment may be inflicted, the other that it may not be?

The Court proceeds upon the assumption that the two actions—the criminal case and the forfeiture proceeding—will both result in the same verdict, when the one punishment could be pronounced. But that does not follow by any means, since they are distinct actions, before distinct juries, each independently arriving at its verdict. And while they pass upon the same acts and facts, they may arrive at different conclusions.

The Court in In Re Leszynsky therefore concludes that the two proceedings do not place the offender twice in jeopardy.

"In jeopardy" means "in peril," "in danger."

When Young was placed on trial under the indictment he was not in jeopardy of having his property forfeited unless that forfeiture could have been included in the judgment in that case. If it could have been included, as Justice Bradley seems to intimate in Boyd vs. U. S., then the Government waived that forfeiture by not including it. (See Ex Parte Lange above.) If the forfeiture could not have been included in that judgment, b required a separate action to inflict it, as Judge Blatchford holds, then Young is now by this action being placed in jeopardy of suffering another, a new, additional and distinct punishment for the same offense, a punish-

ment he was not in jeopardy of, in danger of, in the first case. If this does not constitute placing him for the same offense *twice* in jeopardy, we cannot conceive any case where that plea could avail him. The purpose of the law evidently is to have a person tried for an offense, the punishment prescribed for that offense declared by the judgment in that case and inflicted, and have it done with (Ex Parte Lange above). There must be an end to litigation, and the Constitution says it comes when a man has been tried and convicted once. The law undoubtedly could provide that the forfeiture of the property should be included in the judgment recovered on that trial as well as any other penalties. Then the one judgment would settle the whole thing forever. But under the Government's contention in this case Congress can, if it only puts it in one section, prescribe a dozen punishments for one offense to be inflicted in a dozen different trials, any or all of them to be prosecuted at the option of the United States Attorney. All of them, he says, would then constitute but *one* punishment. If requiring a separate trial and a distinct proceeding in order to inflict a certain punishment does not constitute it a second, different, and new punishment, what could constitute a second punishment? One of the principal objections is that a man never would know when he had gotten through suffering punishments for his offense, as it would be discretionary with the United States Attorney to decide how many he would inflict, and when to inflict them.

The Leszynsky case endeavors to distinguish from U. S. vs. McKee above. Because in the McKee case the two punishments are prescribed for the same offense by different sections, it is argued they are in the alternative, and one satisfies the other, as though there was a disjunctive between the different sections; while if they were in the same section they would be cumulative and one punishment. This, although the Revised Statutes declare what laws are in force, and constitute one act. The fact that the statute states that certain acts constitute an offense, and prescribes the different punishments in two sections instead of one, certainly can make no difference if it is apparent that the sections are to be read together.

It will be observed that Judge Blatchford accepts the reasoning in U. S. vs. McKee as correct, and holds that where a person has been punished under one section he cannot afterwards be punished for the same offense under another section. While, as before stated, we can see no reason for this distinction, yet if it is correct we think our plea should be sustained.

for the indictment of Young was under Section 3451, and the forfeiture is sought, not under that section, but under sections 3257, 3281, 3305, 3453 and 3456 (See opinion of Judge Ross, 43 Fed. Rep., 846). In short, one of the questions with Judge Ross was whether the fact that the two proceedings were under *different* sections would not prevent the plea in bar being maintained.

In U. S. vs. Claflin (7 Otto 546), cited in the Leszynsky case, the Court, in what is probably dictum, holds practically that the forfeiture is in the nature of liquidated damages to indemnify the Government for the loss it has sustained by being defrauded of the import duties on the goods; while the fine and imprisonment constitute the punishment. Since the much later decision in Boyd vs. U. S. above, holding they are *both punishments*, the dictum of U. S. vs. Claflin is probably not of much weight. It could not avail the Government in this case, however, since the statute in relation to distilleries provides for the taxes, of which the Government has been defrauded, being assessed on the property on which they are a first lien, and being collected in a civil suit (Section 3213), as has been already done in this case. So the Government has been compensated for the actual damage it has sustained. It will be found that the old acts cited in the Leszynsky case where fine and imprisonment and also forfeiture are allowed, are smuggling cases where no provision was made for collecting the import tax by any separate proceeding, but the property is forfeited to indemnify the Government for the damage sustained.

In fact, we think it will be found in nearly all cases where the Court has held the action not to be a criminal one, that the Government by the action was seeking to reimburse itself for taxes or duties lost; so that the actions were not merely for the purpose of inflicting punishment, but also for the purpose of recovering money due.

Another case relied on by the Government is U. S. vs. Three Copper Stills. This is a case decided by District Judge Barr of Kentucky, in 1890. The opinion is based upon the declaration in The Palmyra, 12 Wheat, 14, that "the thing is here "primarily considered as the offender, or rather, the offense "is attached primarily to the thing." And the Court also says: "There is no case known to me which decides that this "constitutional provision (the jeopardy clause of Amendment "5 of the Constitution), includes a proceeding *in rem*, which "is a civil action, within its inhibition." We have seen that

the case of Boyd vs. U. S., decided much later than The Palmyra, holds the proceeding *in rem* is a criminal action, so far at least as a part of Amendment 5 is concerned; that it is a proceeding to punish the owner for an offense, and he is the real defendant. The Three Copper Stills decision, however, avoids directly passing on the question of twice in jeopardy, but holds the packages of liquor are forfeited because of their being in a place not allowed by law, and not for any offense of their owners; therefore it is not sought to forfeit them for the acts for which their owners were tried. The opposite is admitted to be the fact in the case at issue.

The Government also relied on the decision of the District Court of the U. S. Northern District of California in U. S. vs. Olsen. The Court in that case accepts the rule as laid down in U. S. vs. McKee, but holds that that rule does not apply in the Olsen case. It says: "Here (in U. S. vs. McKee) the same "party was being prosecuted in the two actions for the same "specific acts, and the issues were therefore identical. This "is not the case at bar." The Court also distinguishes from this case, U. S. vs. One Distillery.

People vs. Stevens relied on by the Government is a New York case decided in 1835. It arose under the New York Revised Statutes; Sec. 16 of a certain Chapter provided that all tavern-keepers who should sell liquor without a license should pay a penalty of $25, and Sec. 19 provided that this penalty should be recovered by the Overseers of the Poor; Sec. 25 of the Statutes provided that the same act should be a misdemeanor punishable by fine and imprisonment. Stevens having paid the penalty under Section 19, was indicted for the same offense under Sec. 25. According to the claim of the Government the punishments, being in different Sections, would not be one; and Stevens having suffered the full penalty under Sec. 19, could not suffer under Sec. 25. The Court held otherwise, however. The decision seems to us to be of little weight since it is in conflict with the United States authorities.

The Government's other point is, that the property became forfeited at the time the offense was committed, and title was immediately vested in it and has never been divested.

It seems to us this is begging the whole question. The Government, by reason of the fraud, acquires a right to have the property declared forfeited to it, which it must establish by proper proceedings. Suppose it never takes these proceedings at all. Could it be claimed that the title to the property was in the Government? And could not the Government waive its right by not bringing suit?

The question in U. S. vs. Stowell, and the other cases preceding it cited by the Government, was, whether innocent purchasers, after the fraud and before the judgment of forfeiture, were protected. And in order to avoid those conveyances, it was held that a judgment in the Government's favor in the forfeiture proceedings dates back to the time the offense was committed, and vests title in the Government as of that date, and avoids any subsequent conveyances by the parties. The title is established by the judgment, however, and if there is no judgment there is no title; and if the Government fails to obtain that judgment, either by failing to bring the suit or by an estoppel, or because it has elected to pursue another remedy, which the Constitution says is a bar, then title never is perfected in the Government but still remains in the parties. Until the proceeding *in rem* is completed by a judgment in its favor, it is still an open question whether any fraud has been committed, and the Government has no title. The burden of proof is still on the Government to prove it has any claim to the property.

The very latest decision does not declare that the unlawful act transfers the property or the title to the property at that time, but "the *right* to the property then vests in the United "States, although their *title* is not perfected until judicial con- "demnation; the forfeiture constitutes a statutory transfer "of the *right* to the United States at the time the offense is "committed, and the condemnation, when obtained, relates "back to that time, and avoids all intermediate sales and "alienations, even to purchases in good faith." (U. S. vs. Stowell, 133 U. S., 1.) It is evident that no title passes until a decision in the Government's favor in the forfeiture proceedings. The decision in the criminal case does not settle it, for the property could not be forfeited in that proceeding.

From an examination of the original acts it seems to us the original idea in passing laws prescribing fine and imprisonment and forfeiture of the goods was threefold. 1st: The idea that the goods themselves by some fiction of law were being punished for the offense by this forfeiture, and not the owner; as though the goods themselves could commit a crime. This idea Boyd vs. U. S. seems to us to effectually dispose of. 2nd: That the forfeiture was not a punishment for the offense, but was a proceeding by the Government to recover compensation for the damage suffered by it by the loss of taxes imposed; and the value of the goods was liquidated damages. This idea is also refuted by Boyd vs. U. S., but even if it were

true, it could not be urged in this case since the present law provides for the recovery of the damage suffered in a separate action, which course has already been pursued in this matter. 3rd: The idea that the perpetrator of the offense and the owner of the goods might be distinct, so that the punishment of the ostensible offender might be no punishment of the real offender who was the owner of the goods. With this idea in view, there was good reason why the punishments should not be in the alternative. This, however, will not avail the Government, as it is admitted the perpetrator of the offense who has been fined and imprisoned is, for the purposes of this case, the owner and claimant of the property it is sought to forfeit.

In the light of modern decisions, we do not see how, in any view of this forfeiture proceeding, it can be construed as anything but an action purely, simply and solely to inflict a second punishment on a party for an offense for which he has already been punished, and is placing him twice in jeopardy for the same offense.

In conclusion, we cannot do better than quote the language of Justice Bradley in Boyd vs. U. S. above, which is quoted and approved in 148 U. S., 325, and 149 U. S., 744, and is as follows: "Illegitimate and unconstitutional practices get their first "footing in that way, namely: by silent approaches and slight "deviation from legal modes of procedure. This can only be "obviated by adhering to the rule that constitutional pro- "visions for the security of person and property should be "liberally construed. A close and literal construction de- "prives them of half their efficacy and leads to gradual depre- "ciation of the right, as if it consisted more in sound than in "substance. It is the duty of Courts to be watchful for the "constitutional rights of the citizen, and against any stealthy "encroachments thereon. Their motto should be *obsta prin- "cipiis.* We have no doubt that the legislative body is actu- "ated by the same motives, but the vast accumulation of pub- "lic business brought before it sometimes prevents it, on a first "presentation, from noticing objections which become devel- "oped by time and the practical application of the objection- "able law."

Frederic W. Hall

Attorney for Claimants.

San Francisco, December 30, 1898.

UNITED STATES *v.* ONE DISTILLERY *et al.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 190. Argued April 6, 1899. — Decided April 24, 1899.

There was no proof in this case to overcome the denials in the original answer, and to show that the property seized by the Collector of Internal Revenue had been forfeited to the United States.

THE statement of the case will be found in the opinion of the court.

Mr. Assistant Attorney General Boyd for plaintiffs in error.

Mr. Samuel G. Hilborn for defendants in error. *Mr. Frederic W. Hall* filed a brief for same.

MR. JUSTICE HARLAN delivered the opinion of the court.

This was an information filed November 13, 1888, in the District Court of the United States for the Southern District of California to obtain a decree declaring that certain real and personal property which had been seized by a Collector of Internal Revenue was forfeited to the United States.

The information was based upon sections 3257, 3281, 3305, 3453 and 3456 of the Revised Statutes.

The property in question once belonged to the Fruitvale Wine and Fruit Company, a corporation of California. The acts that were set forth as constituting the grounds of forfeit-

ure were committed, if at all, while that corporation owned the property. Subsequently, June 9, 1888, the property was purchased by Wolters, Helm, Austin and Coffman at a public sale thereof by the assignee of the company — the consideration, $7700, being paid in cash to the assignee. They appeared and filed a demurrer to the original information. The demurrer was confessed, and an amended information was filed January 11, 1889.

Wolters, Helm, Austin and Coffman on the 19th day of April, 1889, filed an answer to the amended information, controverting its material allegations. The answer contained these among other averments: "That they [the claimants] have not sufficient information in regard to the several wrongful acts alleged to have been perpetrated by said corporation on which to found a belief; they therefore, on behalf of said corporation, deny all and singular the alleged fraudulent acts charged in said information as having been done and performed by said corporation."

On the 21st day of August, 1890, the claimants filed an amendment of their original answer, in which they averred that in December, 1888, W. Moore Young, who was secretary of the Fruitvale Wine and Fruit Company, and one of the owners of the property in question when the acts complained of in the original and amended information were committed, was indicted in the same court, and was convicted and sentenced to imprisonment for one year in the county jail. The claimants further averred that the acts complained of in this case were the same as those relied on by the Government in its prosecution against Young, and that because of the proceedings and judgment against Young the United States ought not to maintain its present action. The amended answer concluded: "These claimants aver the foregoing in addition to their answer already on file herein, and expressly rely not only upon this, but upon all of the allegations and denials contained in said original answer. And having fully answered, they pray as they have heretofore prayed in said original answer."

The demurrer to the amended answer was overruled by an order entered October 20, 1890, and an exception was taken

by the United States to the action of the court. 43 Fed. Rep. 846. On the next day the following decree was entered: "This cause came on regularly for trial before the court, sitting without a jury, a jury trial having been expressly waived in writing, the United States being represented by Willoughby Cole, Esq., United States attorney, and the claimants by Messrs. Brousseau and Hatch, and Henry C. McPike, Esq. Whereupon the United States attorney announced to the court that the facts set forth in the amended and supplemental answer heretofore filed by the claimants in this action, and to which a demurrer had been interposed by the United States and overruled by the court, might be considered by the court and taken as true for the purposes of this trial, as if the said facts had been proved by competent witnesses, but that they were insufficient in law to constitute a defence to this action. Thereupon the United States, by their said attorney, and the claimants by their attorneys aforesaid, submitted the cause to the court for its decision upon the pleadings in said cause and the said amended and supplemental answer, the facts as to the matter, as already stated, being taken as true, the court, after considering the same, orders and decrees that the libel herein be, and the same is hereby, dismissed."

The case was carried to the Circuit Court, and was pending there at its January term, 1891. On the 23d day of February, 1897, the judgment of the District Court was affirmed.

It is contended on behalf of the Government that the amended and supplemental answer did not present a valid defence, and therefore that the Circuit Court erred in affirming the judgment of the District Court. But if, independently of the particular question raised by the amended and supplemental answer, the judgment of the District Court dismissing the information was right upon any ground disclosed upon the record, the judgment of the Circuit Court affirming the judgment of the District Court should not be held to have been erroneous.

It cannot be doubted that by the information and the original answer the distinct issue was presented, whether the prop-

erty in question was forfeited to the United States by reason of the wrongful and fraudulent acts specified in the information. The answer put the Government upon proof of those acts. No proof was however made by the Government to establish the alleged grounds of forfeiture. Nevertheless, *the cause* was submitted for *decision* not only upon the facts set forth in the amended and supplemental answer, taking them to be true, but *upon the pleadings*. So that even if the District Court had been of opinion that the amended and supplemental answers were insufficient in law, it still remained for it to determine the rights of the parties upon the information and the original answer. As the original answer controverted the material allegations of the information, and as the cause was submitted for decision upon the pleadings, without any proof to sustain the allegations of fraudulent acts forfeiting the property, the final order dismissing the information was proper. If the claimants had withdrawn their denials of such allegations of the information as set forth the grounds upon which the Government asserted the forfeiture of the property in question, it would then be necessary to consider whether the conviction of Young precluded the United States from proceeding by information against the property. But the claimants did not take that course. They were careful in the amended and supplemental answer to say not only that the facts therein alleged were in addition to those set forth in their original answer, but that they relied upon the denials contained in the original answer.

Without considering the merits of the question raised by the amendment of the answer, we affirm the judgment of the Circuit Court upon the ground that there was no proof in the case to overcome the denials in the original answer of the averments of the information, and to show, as against the claimants, that the property had been forfeited.

Affirmed.